

Research on the Builder's risk insurance on the basis of UK, China and Norway



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1 Introduction

1.1 Builder's risk insurance

Builder's risk insurance is a special type of insurance which indemnifies against damage to ships while they are under construction.¹

A ship under construction can be damaged or destroyed during the building period, e.g. by fire or as a result of enemy action. Usually such loss will fall on the shipbuilder, as he bears the risk for the ship until she is delivered to the purchaser. The shipbuilder consequently has an insurable interest, which can be insured on a special kind of hull policy—the English term “builder's risk insurance” (“Builders' risks insurance” in Norwegian terminology).

This paper is meant to compare the clauses on builder's risk insurance from a perspective of the three countries: UK, China and Norway.

1.2 Reasons for this topic

1.2.1 Essential points in general

Ship is the basic element of the whole shipping industry. Shipbuilding activities, therefore, call for attention.

¹ http://en.wikipedia.org/wiki/Builder%27s_risk_insurance

The majority of our planet, the earth, is covered by sea. Everyday, thousands of ships sail on different shipping routes that link cities, nations and the continents. Looking from the history, since ancient times, a ship has been the most important transportation mean for the human's adventure on sea. Even during the period from 15th until 19th century, a ship has been the only choice for heading from one to the other side of the world. Nowadays, people seem to be less dependent on ship for long travel because of the invention of aircrafts in early 1900s and the development of other transportation means. However, transportation by ship is still the most cost-effective mean for carrying raw materials and commodities. Some fact is that it makes 90% of the world trade.²

In addition, shipbuilding is a huge, time and money consuming project. It is also closely connected to the sailing safety after being put into service. As it is well-known, maritime activities encounter a lot of special perils and high risks. The shipbuilding guarantee turns out to be a significant issue. Builder's risk insurance, to some extent, plays an important guarantee role in the process of shipbuilding.

1.2.2 Special demands in China

China is one of the main shipbuilding nations in the world. Almost nine of ten new vessels in the world's merchant fleet and 70% of offshore vessels and installations are built in Korea, Japan or China. The latest news show that China was announced the world's largest shipbuilder in 2010, five years ahead of target in 2015. However, Chinese give more importance to the knowledge about ship insurance such as hull insurance, loss of hire insurance and marine cargo insurance, than the specific research about builder's risk. Nevertheless, we should pay more attention to the builder's risk because it becomes more and more important for international marine insurance.

² Zhendong Lu, *Can China become No.1 shipbuilding nation in 2015*, Erasmus University Rotterdam. 2004/2005

1.2.3 Interesting facts

As it is known to us, comparison brings up interesting information. It will show the difference, especially when the comparison is based on specific rules. Unlike many other sectors of the maritime law, we still do not have international convention governing marine insurance. As a result, each country is still using its own separate national rules, including the ones regarding the builder's risk insurance.

1.2.4 Mutual influence

The reasons for comparison of these three systems are practical considering that, for example, Chinese insurers sometimes grant insurance on English terms or that English insurers grant insurances on Norwegian terms.

The choice of these three systems for the purposes of comparison can be further justified on the grounds, on one side, that the Norwegian plan is one of the most recent and probably the most advanced code in existence, in which contains good clauses and practices worth to be learnt from. On the other side, modern marine insurance law was first developed in English and the English system remains the major system of marine insurance law today, being applied directly to a large proportion of marine insurance contracts or indirectly through its influence on commonwealth law and practice. The development of marine insurance in English, which has been so strongly influenced by tradition and case law, provides a marked contrast between the situations in Norway and China.

1.3 The aims of this thesis

Considering the need for builder's risk insurance, which was mentioned above in sub-chapter 1.2, we find it is not surprising that the countries, which having such important

shipping interests as China, should have a well developed body of law dealing with builder's risk insurance issues.

I was triggered by the Chinese national scheme that the Chinese government declared China is going to be No.1 shipbuilding nation in the world in 10 years. I am also impressed by the outstanding achievement China has made in the shipbuilding industry. However, I understood that, the research on builder's risk insurance, which aims to protect the shipbuilding industry, is unfortunately quite limited. Especially as an essential shipbuilder nation, the insurance rate in Chinese shipbuilding industry is relatively low, which somehow break the balance between the production and security. This motivated me to do the research on this topic.

The aim of this paper is comparison of the builder's risk insurance clauses among the three countries, as well as analysis of the three different law systems. I would also like to emphasize some points that could help improve the existing clauses, especially the ones from Chinese.

2 General outlook

2.1 General outlook of Builder's risk insurance

The majority of modern shipbuilding contracts accordingly impose upon the builder an obligation to insure the vessel in respect of so called "builder's risk" from the time of the keel-laying until delivery.³

Throughout the course of her construction, outfitting and trials the vessel will face significant risks of physical loss and damage. As noted previously, these risks customarily fall upon the builder, although both parties to the contract will normally wish to be satisfied that he is adequately insured against such exposures.⁴

The insurance is mainly meant for loss of or damage to the vessel during construction although it also provides some P&I cover. It does not cover the builder's liability for any defect in the vessel discovered after expiry of the insurance. The insurance is taken out by the builder who has property in the vessel until such time as the building and testing has been completed and the vessel is delivered to the shipowner.⁵

A general outlook of builder's risk insurance on the concept, character, risks and insurable interest will be presented in the following chapter 2. The legal sources governing the builder's risk insurance in the three countries can be found in chapter 3. A comparison between these three systems base on the topics about the insurance period, subject-matter

³ Simon Curtis, *The law of shipbuilding contracts*, London, p199

⁴ Simon Curtis, *The law of shipbuilding contracts*, London, p199

⁵ *Marine insurance underwriting*, The Chartered Insurance Institute 2005, 775/May 2005, 1/17

insured, place of insurance and insurable value will be general illustrated in the chapter 4. The topic “peril covered” will be specifically discussed in chapter 5 as well as the two interesting issues on the “all risks and named risks principle” and “latent defects” will be addressed. The conclusion is presented in chapter 6.

2.2 Concept and character

2.2.1 What is Builder's risk insurance?

Builder's risk insurance is a special type of insurance which secures ships or other floating structures against damage while they are under construction.

Builder's risk refers to the insurance in respect of “maritime and shore perils” leading to partial or total loss of the vessel, re-launching expenses in the event of a failure to launch and collision, salvage and general average liabilities incurred in the course of the vessel's trials.⁶

Builder's risk insurance includes broad coverage. It is meant to be a composite insurance which includes many different kinds of insurance, such as hull insurance, construction project insurance, and P&I insurance.

Builder's risk insurance, first and foremost, is a construction project insurance. Shipbuilding is a huge construction project. During the course of the construction, outfitting and trials, the ship will face significant risks of physical loss and damage, for example, loss or damage caused by negligence of worker or due to the faulty design of hull, machinery and equipment.⁷

⁶ Simon Curtis, *The law of shipbuilding contracts*, London, p199

⁷ Gao Linlin, *Research on the Builder's risk insurance*, Dalian Maritime University, p5

Builder's risk insurance is also deemed to cover the same risks as under hull insurance. Hull insurance is first and foremost property insurance and the object of this insurance is one or more ships with equipment. Builder's risk insurance covers not only the loss and damage of the insured vessel, but also the liability following a collision or striking. It covers natural calamities as well as damage caused by negligence or fault. In the event of a failure to launch, the builder's risk insurance also covers the expenses necessarily incurred in completing launch.

Builder's risk insurance is a Protection & Indemnity insurance (P&I insurance) as well. P&I insurance is first and foremost liability insurance, but in certain circumstances it also covers loss, damage and expenses incurred by the assured.⁸ For instance, builder's risk insurance covers liabilities and expenses under general average and salvage, as well as the expenses for the removal of the wreck of the insured vessel and sum in respect of the liabilities for death of or bodily injury to third parties consequent upon an accident to the insured vessel.

2.2.2 Features

As we mentioned above, this insurer's risk liability scope involves hull insurance, construction project insurance, and protection & indemnity insurance. Together they make a unique compositive insurance. Foremost, Builder's risk insurance can be defined as specialized coverage for construction projects.

Second, builder's risk insurance provides cover against loss of or damage to the vessel during the period of construction from the laying of the keel and sea trials to delivery of the completed vessel.

⁸ Thor Falkanger, Hans Jacob Bull, Lasse Brautaset, *Scandinavian maritime law, the Norwegian perspective*, 2nd edition, page 533

Third, the cover can be extended to include the entire building process as the vessel comes together including cover for engines and equipment that are awaiting installation. Builder's risk insurance also includes protection against certain liabilities arising out of the ownership of the vessel.

Forth, the term "builder" is misleading because assured can include not only the contractors performing the work (shipbuilders), but the ultimate owners (the buyers), lending institution (such as banks) and others.⁹

In shipbuilding, the risks of physical damage customarily fall upon the shipbuilder, who has property in the vessel from the time of her keel-laying until the time when the building and testing have been completed and the vessel is delivered to the buyer/shipowner. The shipbuilder consequently has an insurable interest and will be the party who purchase the insurance. The insurable interest in a positive sense means that several economic interests in the same object can be insured, but implies that a contract which does not relate to any interest is void in a negative sense.¹⁰

Therefore, as a starting point, the insurance will be taken out by whoever has the insurance interest. Usually the insurance is taken out the builder's name alone, although this is not always so, particularly if the project is likely to involve the provision of buyer's supplies of a substantial value, which means the buyer or the bank can also involve into the contract as co-insured.¹¹

Fifth, suppliers of materials, although having an insurable interest in the property under the construction, are not normally candidates for builder's risk insurance, unless the underwriters are specifically prepared to agree. The buyer may, however, be entitled to

⁹ Donald S. Malecki, *Builder's Risk Insurance: Specialized Coverage for Construction Projects*, CPCU

¹⁰ Trine-Lise Wilhelmsen, Hans Jacob Bull, *Handbook of Hull insurance*, P66

¹¹ Simon Curtis, *The law of shipbuilding contracts*, London, p199

recover damages from the builder if he can demonstrate that the loss of his supplies has resulted from a breach of the latter's duties as bailee.¹²

2.3 Risks and insurable interest

During the course of the construction, outfitting and trials, the vessel will face significant risks of physical loss and damage.

Generally, the insured risk is based on the conditions stated in the builder's risk clauses. For example, fire risk is obviously a foremost consideration for the underwriter though he tends to judge this risk on an overall basis rather than apply it to individual yards.¹³

Builder's risk insurance conditions are designed to cover the insurable interest of the shipbuilder. As we mentioned before, the shipbuilder bears the risk as he is the person who has the interest of the newbuilding until she is finished and delivered to the buyer, the shipowner. Even when a builder's yard is commissioned to build a ship under contract it is customary for the contract to make the builder responsible for the ship until it is delivered to the owner.

The principle of insurable interest is fundamental to every insurance contract. The Marine Insurance Act (MIA), 1906, provides that the assured need not have an insurable interest in the subject matter insured at the time the insurance contract is concluded between the underwriter and the assured, but the assured must have an insurable interest in the subject matter at the time of loss in order to claim under the policy. Builder's risk clauses follow this practice.¹⁴

¹² Simon Curtis, *The law of shipbuilding contracts*, London, p203

¹³ Robert H. Brown, *Marine insurance- vol.3- Hull practice*, London, p239

¹⁴ See also Robert H. Brown, *Marine insurance- vol.3- Hull practice*, London, p755

3 Legal Sources

The main rules governing builder's risk insurance in UK, China and Norway.

In contrast with the other areas of maritime law, there are no common international or legal sources in the marine insurance law area. Thus the individual legal framework is required to be presented before starting the main discussion.

3.1 The source of English builder's risk insurance

In the UK, marine insurance is regulated by a special act, the UK Marine Insurance Act of 1906 (hereafter MIA). The MIA codifies the layer of clauses that existed at the beginning of the 19th century. Also, the MIA is under evaluation in several Common Law nations building on this act.

The English market is today divided between Lloyd's and the Companies, which effect insurance on identical conditions. There is a substantial market at Lloyd's and among UK company insurers to provide full terms cover for ships which are under construction, reconstruction or conversion.¹⁵

In the 19th century, Lloyd's and the Institute of London Underwriters (ILU) developed standardized clauses for the use of marine insurance. These have been maintained ever since and are known as institute clauses.

¹⁵ Robert H. Brown, *Marine insurance- vol.3- Hull practice*, London, p742

The Institute Builders' Risk Clauses, which are published by the Institute of London Underwriter (ILU) for use solely with the MAR form of policy and incorporated an English law & practice clause, are the most widely used and accepted international standard form of insurance coverage for vessels under construction. The most recent revision is dated 1 June 1988, the Institute Builder's Risk Clauses (CL. 351) (hereafter "ILU clauses").

Unlike other set of Institute hull clauses, which rely on a policy schedule for descriptive detail to identify the risk, the ILU incorporate spaces and boxes into which such detail can be inserted.¹⁶ The sections in the clause are being completed as appropriate to the subject matter which is to be insured.

3.2 The source of Chinese builder's risk insurance

Chinese national rules on marine insurance are contained in the Chinese Maritime Code (hereafter "CMC"¹⁷), as the Chapter XII "Contract of Marine Insurance". Relatively late developed, Chinese maritime law has absorbed rich experiences of other jurisdictions. In particular, English marine insurance law has been in many places modeled upon in Chinese Maritime Code. Nevertheless, there are still many differences. Further, in the case where the CMC makes no provision for a particular issue, the corresponding revision of Chinese Insurance Law (hereafter "CIL") shall be applied to decide the case in issue.¹⁸

The Chinese Insurance Law has been recently amended by Chinese legislature on 28 Feb. 2009 and came into effect on 1 October 2009. Art. 184 provides that the relevant provisions of the Chinese Maritime Code shall be applied to marine insurance, while in the absence of provision, the relevant provision of this law shall be applied for a particular issue in Chinese Maritime Code.

¹⁶ Robert H. Brown, *Marine insurance- vol.3- Hull practice*, London, p755

¹⁷ Adopted at the 28th Meeting of the Standing Committee of the Seventh National People's Congress on November 7, 1992, promulgated by Order No. 64 of the President of the People's Republic of China on November 7, 1992, and effective as of July 1, 1993

¹⁸ Wang xin, *Some Duties of Marine Insurers in Chinese Law-viewed against the background of related English law*, law school of Dalian Maritime University

However, reference should be made to the general Chinese law especially the Contract Law of PRC (hereafter “CCL”¹⁹) before one can be sure whether or not such rules exist.

On 1st January 1986 the builder’s risk insurance clauses that were used in Chinese insurance market were replaced by The People’s Insurance Company of China Builders’ risk insurance clauses (hereafter “PICC clauses”). These are the main and most popular clauses in Chinese marine builder’s risk insurance market. The Clauses were designed to cover the builder’s insurable interest of the ocean-going ship, for the ship design for inland is covered by a separate PICC builder’s risk insurance.

3.3 The source of Norwegian builder’s risk insurance

Up until 1930, Norwegian marine insurance was subject to regulation in the Maritime Code. At that time, the rules were instead included in the Insurance Contract Act of 1930, but the Act had only limited relevance.²⁰

The most important legal source in Norway has been the Norwegian Marine Insurance Plan. These documents were drafted jointly by insurers, assureds and other interested parties and can thus be described as agreed standardized conditions. The plans contain comprehensive insurance conditions for different types of marine insurances, and are made applicable by a direct reference in the relevant insurance contract. The tradition of such plans dates back to 1871 after which they have been revised with 10-30 year intervals, the latest one is The Norwegian Marine Insurance Plan of 1996 (version in 2010) (hereafter “NMIP clauses”). The Plan contains a separate chapter 19 for Builders' Risks insurance which represents the leading clauses in Norwegian shipbuilding industry.

¹⁹ The Contract Law of the People’s Republic of China was promulgated by the second session of the 9th National People’s Congress on March 15, 1999 and has come into force as from October 1, 1999.

²⁰ Thor Falkanger, Hans Jacob Bull, Lasse Brautaset, *Scandinavian maritime law, the Norwegian perspective*, 2nd edition, page 477

Builders' risks insurance rules in Chapter 19 of NMIP are based on Cefor Form 250²¹, which is in turn based on Institute Clauses for Builders' risks. Builders' risks insurance is, in addition to the provision in chapter 19, also subject to the provisions in the general part of the Plan (chapter 1-9), and the rules in chapters 10 to 12, insofar as this transpires from chapter 19, section 2.²²

In Norway, the contract is contained in a policy which expressly incorporates the terms of the relevant plan and very often a set of clauses published by the Central Association of Marine Insurers (Cefor). The Norwegian insurance plan can best be described as an advanced and very comprehensive standard contract having many of the characteristics of a legislative code.²³

In addition, Chapter 19 directly applies only to the building of ships and is intended to cover the yard and the buyer's needs in the building situation. In the event of repair of a ship, the ordinary hull and loss of hire conditions shall apply.

²¹ Cefor- the Nordic Association of Marine Insurers, Cefor represents marine insurers in the Nordic countries. Cefor Form 250 presents the conditions for insurance of builder's risks in Norway

²² See also Norwegian Marine Insurance Plan 1996, version 2010- Commentary

²³ See also Nicolas Wilmot, *The contract of Marine insurance in English and Norwegian law*, Institute of private law, University of Bergen, p2/25

4 General comparison between the three systems

4.1 General Introduction

A comparison between these three systems will be generally illustrated base on the following topics about the insurance period in subchapter 4.2, subject-matters insured in subchapter 4.3, place of insurance in subchapter 4.4 and insurable value in subchapter 4.5. For each topic, there is a general introduction, followed by presenting the provisions regulating these three systems for the topic. A summary will be analyzed in the third part including the aspects of both similarity and difference.

4.2 Insurance period

4.2.1 Introduction

Builder's risk insurance is a kind of special insurance that exists in the shipbuilding session. When considering the period of cover, one keeps in mind that the assured wishes to be covered for his insurable interest on any part of the ship from the time when interest begins, until his insurable interest in the completed vessel lapses, which is when it is delivered to the owner.

It is impossible to anticipate, with any accuracy, how long the period of cover should be. From the history of marine insurance, one might care to note that, although building risk policies were treated as voyage policies for stamp duty purposes, the MIA (1906) made no

exception for such policies when, in section 25 (2) it made invalid any policy issued for a period exceeding 12 months. This section of the Act was repealed in August 1959 so, today, the point is of academic interest only and there is no legal restraint on the issue of a policy for a period exceeding 12 months.²⁴ Therefore, there is a need for special rules determining when the builders' risks insurance terminates because such insurance does not run on an annual basis, which is considering the takeover date and extension.

In normal case, the insurance of the builder's risk takes effect from the start of the construction programme until the day agreed for delivery. However, there are more stories in practice. Some situations might occur when the ship may be delivered to the owner before the expiry of the provisional period, or is not able to be delivered on time on the termination date expressed in the policy. Different solutions are found in these three systems, as we will see further in the text.

4.2.2 Insurance period in the different systems

4.2.2.1 English law

The rule of insurance period is specified in article 1: Provisional period from...to..., but this insurance to terminate upon delivery to owners if prior to expiry of provisional period.

The clauses are insuring the builder until the agreed timescale (the "provisional period"), in connection to the vessel's construction programme. However, it will be automatically terminated upon the delivery to the buyer. Nevertheless, if the ship has not been delivered by the termination date expressed in the policy, it is the custom for the assured to be allowed an automatic continuation of cover for up to a fixed number of days, as expressed

²⁴ See also Robert H. Brown, *Marine insurance- vol.3- Hull practice*, London, p744

in the policy. This could be agreed in case the delivery is delayed beyond the provisional period, but in no circumstances for more than 30 days from the completion of the trials.

The builder must notify the insurer promptly and accordingly renegotiate the terms of cover in the event of a significant delay in the delivery to pay an additional premium if the insurer so wishes. The amount of the additional premium charged depends on the number of days the policy is continued.²⁵

In any event the cover automatically terminates upon the assured losing his insurable interest during the currency of the insurance contract.

4.2.2.2 Chinese system

Rules can be found about period of insurance in article I of PICC clauses:

“Subject to the period of insurance specified in the schedule to the policy, the insurance attaches from the day of commencement of the building berth until the time of delivery to the order or owner of the insured vessel upon completion of building, or until the time of expiry of the period of insurance, whichever first occurs.”

A provisional period of cover is agreed at the time the contract is concluded between the insurer and the assured, the agreed dates of attachment and termination being specified in the policy. If the ship is delivered to the owner, before expiry of the provisional period, the policy lapses upon such delivery. If not, the assured is customarily allowed an automatic continuation of cover for up to a fixed number of days. The insurance is valid until the newbuilding ship is delivered to the shipowner.

²⁵ See also Robert H. Brown, *Marine insurance- vol.3- Hull practice*, London, p744

“The insurance on the materials, machinery and equipment allocated to the insured vessel prior to application for insurance, attaches from the day of inception of insurance specified in the schedule to the policy.”

“The insurance on the materials, machinery and equipment allocated or delivered to the builders after inception of the insurance, attaches from the time of allocation or delivery.”

Cover cannot attach to any item of hull and machinery unless this has been “allocated” to the vessel. “Allocation” is not defined but probably means the setting aside of the item, either by marking or physical segregation, preparatory to its incorporation within the insured hull.²⁶

“The company will return to the insured the agreed premium if the insured vessel is delivered to the owner one month before expiry of the period of insurance stipulated in the schedule to the policy. No premium will be returned if the insured vessel is delivered to the owner less than one month before expiry of the period of insurance, where delivery is made beyond the period of insurance. Previous written notice shall be given to the company for an extension of the period of insurance. An agreed additional premium will be charged if the time of extension attains one month. No additional premium will be charged if it is less than one month. ”

One month is the key word, and the provisional period expressed in the policy is the sticking point. That is, an agreed premium will be returned if the insured vessel is delivered one month earlier before the provisional period expired or will be charged if the delivery is not implemented one month later after the provisional period has expired. In contrast to this, no premium will be returned or charged if the insured vessel is delivered earlier in one month or not delivered later in one month.

²⁶ Simon Curtis, *The law of shipbuilding contracts*, London, p201

4.2.2.3 Insurance period by NMIP

From NMIP clauses § 19-2, and refers to § 1-5, we discover the rules of insurance period as following: “The insurance remains in effect until the takeover date stipulated in the building contract. If takeover is later than that date, the insurance will automatically be extended subject to an additional premium as agreed in the policy until the newbuilding is in actual fact taken over by the buyer.”

The rule of an automatically extension grounds on the consideration that regardless of whether it is the yard or the buyer who in such cases bears the risk for the newbuilding, there is a need for continuous insurance cover until the newbuilding is comprised by an ordinary hull insurance. To ensure ongoing insurance coverage it has therefore been taken for a basis that the insurance remains in effect until takeover, regardless of whether or not the newbuilding is ready and regardless of whether or not the delivery date under the building contract has been met.²⁷

“If the newbuilding is not taken over by the buyer, the insurance is automatically extended subject to an additional premium as agreed in the policy until the newbuilding is in actual fact taken over by another buyer.”

The extension in this situation is only triggered where the newbuilding is not “take over” by the original buyer. If it is the original buyer who takes over the newbuilding after first having refused to take delivery, it is subparagraph 1 that regulates the termination of the insurance. In addition, if the newbuilding remains at the yard after takeover in accordance with this provision, this consequently does not entail an extension of the builder’s risk insurance. In such cases, the buyer must arrange for ordinary hull insurance.²⁸

²⁷ See Norwegian Marine Insurance Plan 1996, version 2010- Commentary

²⁸ Norwegian Marine Insurance Plan 1996, version 2010- Commentary

“Extension of the insurance does not apply beyond nine months from the takeover date stipulated in the building contract.”

This stipulates a maximum period for how long the supplementary cover remains in effect without separate agreement, viz. up to nine months after the takeover date in the building contract.

4.2.3 Summary

4.2.3.1 Similarity

ILU, PICC and NMIP clauses have the similar rules in subject to the period of insurance specified in the schedule to the policy. The insurance attaches from the day of commencement of the building berth until the time of delivery to the order or owner of the insured vessel upon completion of building, or until the time of expiry of the period of insurance, whichever first occurs.

4.2.3.2 Difference

However, we find much difference in many aspects.

First of all, in case where delivery is made beyond the period of insurance, PICC clauses states that previous written notice shall be given to the company for an extension of the period of insurance. For NMIP clauses, if takeover is later than that date, the insurance will automatically be extended subject to an additional premium as agreed in the policy until the new building is actually taken over by the buyer. There is no need to inform him before the extension begins. And for ILU clauses in this case, it is necessary to renegotiate in order to make new agreement for the extension.

Secondly, the difference about the time limitation of doing the insurance extension is remarkable. There is no time limit in PICC case. For ILU clauses, it is in no circumstances more than 30 days from the completion of the trials. NMIP, on the other hand, provides a time-limit of nine months from the takeover date stipulated in the building contract.

Further, concerning the premium, PICC clauses have more details on the premium. One month is the key word. Sometimes the extension is free of charge. For example, the clauses state that an agreed additional premium will be charged if the time of extension attains one month. However, no additional premium will be charged if it is less than one month. Conversely, no premium will be returned if the insured vessel is delivered to the owner in less than one month before the expiry of the period of insurance.

On the other hand, ILU has more information on attach the sub-contractors' work. And NMIP has more details about the takeover by another buyer instead of the original buyer. It states in the clauses that the insurance is extended automatically against an additional premium as agreed in the policy until the newbuilding is in actual fact taken over by another buyer. The time-limit of nine months shall also apply. But, if it is the original buyer who takes over the newbuilding after first having refused to take delivery, the normal rules on termination of the insurance apply.²⁹

4.3 Subject-matters insured

4.3.1 Introduction

Subject-matters insured, are the targets or objects that are requested or that provide the insurance coverage by the parties of the insurance contract.

²⁹ See also Norwegian Marine Insurance Plan 1996, version 2010- Commentary

The MIA requires only that the subject matter of a contract of marine insurance is “designated in a marine policy with reasonable certainty”. The Clause 3 of the MIA defines the subject matter of marine insurance:

(1) Subject to the provisions of this Act, every lawful marine adventure may be the subject of a contract of marine insurance.

(2) In particular, there is a marine adventure where:

(a) any ship, goods, or other movables are exposed to maritime perils. Such property is in this Act referred to as “insurable property”;

(b) the earning or acquisition of any freight, passage money, commission, profit, or other pecuniary benefit, or the security for any advances, loan, or disbursements, is endangered by the exposure of insurable property to maritime perils;

(c) any liability to a third party may be incurred by the owner of, or other person interested in or responsible for, insurable property, by reason of maritime perils.

Subject-matters insured have three functions by including in the contract: identify the subject matter insured, clear the nature of the risk, and define the risks. The wording in the insurance contract must be clear to identify the subject-matters insured, especially for “the particular object”; a general description can only be identified as species.

The subject-matters insured are essential for an insurance contract. Without identifying the subject-matters insured, the insurance contract becomes null and void. In addition, during the period of insurance, the subject-matters insured may be changed. If the subject-

matters insured have become identified to the objects that are not recognized under the insurance contract, the insurer can discharge from liability.³⁰

4.3.2 Subject-matters insured in different systems

4.3.2.1 English law

Subject-matters insured are described in the beginning of the whole contract of ILU clauses which show the important facts.

The ILU clauses provide information about the insurance of hull and machinery, etc. as identified in section I. Boxes (a) and (b); and for the insurance of machinery etc. i.e. with no cover for the hull or parts or material relating thereto alone, if required, as identified in section II. Bearing in mind that the ship is under construction, care has been taken to provide, in both cases, for the insurance of the parts and/or materials which have been allocated to the ship, but have not yet been built into the ship was provided, from the time the builder acquires an insurable interest in such parts and/or materials.

Section I (a) covers the hull & machinery, etc. of the insured ship at the builders' yard and/or builders' premises within the port or place of construction. The subject matter insured includes parts and material which are intended to be built into the ship, provided they are at the construction location specified and have been allocated to the insured vessel under construction.

Section I (b) covers machinery etc. whilst it is under construction at a sub-contractors' works and/or premises within the port or place of construction.

³⁰ See Wang Pengnan, *Details of Marine insurance contract law*, Dalian Maritime University, 2003, P57

Section II covers machinery etc. (but does not embrace cover for other parts or material to be built into the ship) at the builders' yard and/or premises within the port or place of construction. Section II does not provide insurance cover for machinery, etc. which it is being constructed elsewhere prior to delivery to the builders' yard or premises; not even where such machinery is allocated to the insured vessel. Nor does it provide insurance cover for machinery which is being constructed by a sub-contractor within the port or place of construction. The cover embraces only machinery, etc. which is delivered to the builders' yard or premises for installation in the insured vessel.³¹

4.3.2.2 Chinese system

In general, the subject-matters insured of the builder's risk insurance is base on all kinds of ships or floating objects which are in construction.

What are the ships or floating objects under construction? In theory, Chinese scholars have different opinions on this definition. Some hold that the materials, machinery and equipment, which belong to the builders and will be used for a specific ship, are the ships under construction.³² Some other maintain that the ship under construction includes all the materials and equipments used for building the ship after signing of shipbuilding contracts and before the completing and delivery to the shipowner.³³

The ship under construction, in general understanding, is not really a ship, but a processing which transform the materials, machinery and equipment into a ship by using some construction techniques. The ship under construction means all the materials, machinery and equipment used for building from the very beginning to the ship being completed.³⁴

³¹ See also Robert H. Brown, *Marine insurance- vol.3- Hull practice*, London, p756

³² Li Hai, *The research on the ship's property*, Beijing: Law press, 2003

³³ Si Yuzuo, *Chinese Maritime law Q & A*, China Communications Press, 1998

³⁴ Li Zhiwen, *The status of ship under construction and the legal characters*, Dalian Maritime University, 2004

Subject-matters insured of builder's risk insurance under Chinese system, are included in article III of PICC clauses about the scope of cover: The insured vessel in course of construction, trials and delivery, including loading and unloading, transportation, storage and installation of all the materials, machinery and equipment necessary in building the insured vessel within the insured value and within the shipyard, and the insured vessel in course of launching, proceeding to and from docks or mooring alongside a wharf.³⁵

4.3.2.3 Subject-matters insured by NMIP

Provision 19-9 of NMIP clauses have the clear list of subject-matters insured:

- (a) the newbuilding
- (b) components, equipment and materials manufactured to procure for the newbuilding. Components, equipment and materials supplied by the buyer are, however, only covered if this is set out in the policy, or transpires from circumstances in general
- (c) the yard's costs in connection with drawings and other planning of the newbuilding
- (d) bunkers and lubricating oil on board

The "newbuilding" in letter (a) is meant whatever has at any time been built. If the newbuilding consists of several sections that are built at several different yards, the insurance basically only covers the part of the newbuilding that is built in the yard of the person effect the insurance. If the parties want insurance cover which also comprises sections built elsewhere, a separate agreement must be made for an extension of the place of insurance.³⁶

Letter (b) comprises components, equipment and materials which the yard has for its own account procured or manufactured to be used for the newbuilding, as well as components, equipment and materials manufactured or procured by the buyer.³⁷

³⁵ See also Gao Linlin, *Research on the Builder's risk insurance*, Dalian Maritime University, 2008, P13

³⁶ Norwegian Marine Insurance Plan 1996, version 2010- Commentary

³⁷ Norwegian Marine Insurance Plan 1996, version 2010- Commentary

The object insured in letter (c) is not the specific drawings, models, etc. but the general costs incurred by the yard in its own planning department and to hire consultants in connection with the planning of the ship.³⁸

Letter (d) includes bunkers and lubricating oil on board, Special conditions furthermore comprised, in addition to bunkers and lubricating oil, deck and engine accessories. For cover of bunkers and lubricating oil which are not on board but has been “procured for the newbuilding” follows from the term “equipment” in letter (b).

4.3.3 Summary

4.3.3.1 Similarity

ILU, PICC and NMIP clauses all cover the objects including hull, machinery, components, equipment, materials and so on which have been “allocated” to the vessel. “Allocation” is not defined but probably means the setting aside of the item, either by marking or physical segregation, preparatory to its incorporation within the insured hull.

4.3.3.2 Difference

Firstly, PICC clauses generally mention all the materials, machinery and equipment necessary in building the insured vessel. Furthermore, they specify the subjects according to the process, such as construction, trials and delivery. ILU clauses generalize too, while define subjects according to the position/area, for example, within the port or place of construction at which the shipyard is situated. On the other hand, NMIP clauses use enumeration method to decide which can be specified in the construction

³⁸ Norwegian Marine Insurance Plan 1996, version 2010- Commentary

of insurance protection, for instance, the newbuilding, components, equipment and materials manufactured or procured for the newbuilding.

Secondly, NMIP clauses especially include the items such as the yard's costs in connection with drawings and bunkers and lubricating oil on board which in the case of China and UK are not mentioned.

Lastly, according to the buyer's supplies, PICC clauses mention nothing which put this matter in dark, i.e. it is not clear if the buyer's supplies are covered or not and in which way they will be covered. NMIP clauses, on the other hand, clearly show in §19-9 (b) that components, equipment and materials supplied by the buyer are, however, only covered if this is set out in the policy, or transpires from circumstances in general.

For the situation of ILU, unless the underwriters are specifically prepared to agree otherwise, the coverage extends only to the builder and does not insure the buyer directly in respect of loss of his supplies. Depending upon their value, the buyer may wish to insure himself separately against such risks. The buyer may, however, be entitled to recover damages from the builder if he can demonstrate that the loss of his supplies has resulted from a breach of the latter's duties. Under the ILU clauses, it seems that the builder is not afforded liability coverage in respect of this risk. Article 19.3.5 expressly excludes any claim for "loss of or damage to property, owned by the builders or repairers or for which they are responsible, which is on board the vessel. Therefore, the buyer's supplies are covered only when they are specifically stipulated.

4.4 Place of Insurance

4.4.1 Introduction

Place of insurance refers to the geographical scope of application of the insurance.

4.4.2 Place of Insurance in different systems

4.4.2.1 English law

During the time of building, the place of insurance is described in the section of subject of insurance to cover the subject-matter whilst at builders' yard and at builders' premises elsewhere within the port or place of construction at which the builders' yard is situated and whilst in transit between such locations.

In addition, once construction of the ship has reached a stage where she can be launched she may proceed beyond the confines of the port, according to the limitations of the "navigation" clause.

By referring to the navigation clause in ILU § 9, one can see that no restrictions are imposed on movement of the ship within the confines of the port or place of construction, for the purpose of fitting out, docking, trials or delivery, but such navigation of the ship must be under her own power and is restricted to within a distance by water of 250 nautical miles of the port or place of construction. Should the distance limitation be exceeded the assured is held covered subject to payment of an additional premium to be arranged.³⁹

There is no restriction on towage of the insured ship within the confines of the port or place of construction, but she may not be towed outside the area of the port or place of construction unless previous notice of the intention to tow is given to underwriters and payment of an additional premium has been arranged.⁴⁰

³⁹ Robert H. Brown, *Marine insurance- vol.3- Hull practice*, London, p760

⁴⁰ Robert H. Brown, *Marine insurance- vol.3- Hull practice*, London, p760

4.4.2.2 Chinese system

Place of insurance in PICC clauses is clearly specified in section 5 on the location limit. It is divided into the periods during the time of building and during the time of trial and delivery. During the time of building, the cover is within the shipyard. Held covered subject to previous notice to the company and payment of an agreed additional premium for any transportation, loading and unloading and storage outside the shipyard of materials, machinery and equipment necessary in building the vessel and any movement of the vessel in tow outside the shipyard.

During trial and delivery, single voyage for the vessel over 20,000 gross tons under own power to be within 500 nautical miles, between 1,000 and 20,000 gross tons within 250 nautical miles and below 1,000 gross tons within 100 nautical miles. Should the aforesaid distances be exceeded, prior notice is to be given to the company and an agreed additional premium paid before such extension attaches.

4.4.2.3 Place of insurance by NMIP

Place of insurance is described in §19-5. The insurance is in effect while in the builder's yard or other premises in the port where the builder's yard is situated and whilst in transit between these areas and during trial runs within the area allowed by the new building's provisional certificates.

If specifically agreed, the insurance also covers manufacture or transport outside the yard areas in the building port, insofar as this is set out in the policy.

4.4.3 Summary

4.4.3.1 Similarity

PICC, ILU and NMIP clauses are all including time periods during the building and during the trial and delivery.

Any movement that requires previous notice and agreed additional premium to underwriters is agreed within PICC, ILU and NMIP clauses. For instance, PICC clauses state that any transportation, loading and unloading and storage outside the shipyard requires previous notice to the company and payment of an agreed additional premium. In provision 9.2 of ILU clauses, any movement of the vessel in tow outside the port or place of construction held covered at a premium is to be arranged, provided that previous notice is given to the underwriters.

4.4.3.2 Difference

During trial and delivery, PICC clauses indicate that the rule depends on the gross tons of the vessel. Single voyage for the vessel over 20,000 gross tons under own power is to be within 500 nautical miles, between 1,000 and 20,000 gross tons within 250 nautical miles and below 1,000 gross tons within 100 nautical miles. ILU clauses simply refer to the water distance of 250 nautical miles between the port and the place of construction. According to NMIP, however, the rule that says the insurance comprises trial runs within the area allowed by the newbuilding's provisional certificates comes instead of the rule that mentions limit trial runs within an area of 250 nautical miles. The reason why it was nevertheless decided to base the trading limits on the provisional certificates is partly that the certificate requirement is absolutely fundamental in relation to the operation of the ship,

and partly that buyer and shipyard must therefore be expected to ensure that these papers are in order.⁴¹

Furthermore, during the time of building, ILU clauses comprise builders' yard and builders' premises elsewhere within the port or place of construction at which the builders' yard is situated and whilst in transit between such locations, and including sub-contractors' work at the same position as builders. NMIP clauses have the similar rules as ILU clauses which indicate that in the builder's yard or other premises in the port where the builder's yard is situated and whilst in transit between these areas which means that separate agreement should be made to extend the cover if parts of the new buildings are to be built in a different port.

NMIP clauses, however, do not cover transport of components from subcontractors to the yard. This applies regardless of whether it is the yard that has ordered the components, or they are delivered by the buyer. Components delivered to the yard are included in the insurance once they are in the builder's yard. Where the yard has ordered the main engine or other components for the ship from a subcontractor, the risk will pass to the yard when the part is "delivered" according to the law pertaining to the sale of goods. Normally, the agreement will be to the effect that the yard bears the risk during transport from the supplier's factory. Such transport must be assessed as a separate risk and be covered by a separate insurance.⁴²

In addition, ILU clauses include also in the case of deviation or change of voyage, provided that the notice is given to the underwriters immediately after the receipt of advices, any amended terms of cover and any additional premium required by them are agreed.

⁴¹ Norwegian Marine Insurance Plan 1996, version 2010- Commentary, p450

⁴² Norwegian Marine Insurance Plan 1996, version 2010- Commentary, p449

Also NMIP clauses include a separate rule at §19-6 on removal plan that shall be drawn up if it has been agreed that the insurance shall also be in effect outside the yard areas in the building port and the newbuilding is to be removed outside the areas stipulated in §19-5.

4.5 Insurable value

4.5.1 Introduction

The insurable value is the value of the interest that is insured. This concept must be distinguished from the sum insured/ insured amount, which is the amount the assured who chooses to insure his interest for, and which constitutes the maximum amount the insurer is liable for.⁴³

In hull insurance practice, generally, it is customary for a ship to be insured by a valued policy. Section 27(3) of the MIA (1906) provides that the insured value expressed as such in the policy is deemed to be the insurable value of the ship at the time of loss, claims being based on the insured value. In the case of a ship under construction the actual insurable value is low at inception of cover but it increases as building progresses, so that some arrangement has to be made to allow for this unique situation without prejudice to the assured. Accordingly, it is customary to insure the ship for a provisional value, this being based on an estimate of the actual value of the ship when she will be completed. The policy incorporates a 'value adjustment' clause, which allows the assured to increase or reduce the provisional value if it is different from the final value, but there is usually a condition in the policy limiting the amount of any increase.⁴⁴

⁴³ Trine-Lise Wilhelmsen, Hans Jacob Bull, *Handbook of Hull insurance*, P67

⁴⁴ Robert H. Brown, *Marine insurance- vol.3- Hull practice*, London, p743

⁴⁴ PICC clauses § III 1(1)

4.5.2 Insurable value in different systems

4.5.2.1 English law

Rules about insurance value state in provision 1 of ILU clauses from 1.1 to 1.4. The insured value for the subject matter insured by each section of the ILU clauses, as appropriate to the policy, is inserted in the relevant box. These boxes relate to:

Section I (a) — hull & machinery, etc. at the builder's yard etc.;

Section I (b) — machinery, etc. at a sub-contractor's premises;

Section II — machinery, etc. at the builder's yard, etc.

In each case the insured value so inserted is a “provisional value” and is subject to adjustment in accordance with the “insured value” clause in the ILU. The insured value of the completed ship is deemed to be the final contract price. However, if the ship costs more to build than the contract price the insured value becomes the full building cost plus a fixed percentage increase to cover the assured's insurable interest in the profit he would derive from completing and delivering the ship. This percentage is agreed when the risk is written and is expressed in the insured value clause in the ILU.⁴⁵

By applying the above, the insured value is irrespective of any adjustment. The maximum amount recoverable under the policy for loss or damage to the subject matter insured, in respect of any one accident or series of accidents arising out of one event, is 125% of the provisional value.

4.5.2.2 Chinese system

⁴⁵ Robert H. Brown, *Marine insurance- vol.3- Hull practice*, London, p756

The provision II of the PICC clauses stipulate the insured value and insured amount as following: The total building cost or the final contract value of the insured vessel shall be the insured value and the insured amount shall be determined upon the basis of the insured value. Where at the time of application for insurance the insured amount is based on the provisional value, the insured shall notify the company to effect adjustment of the insured amount when the insured vessel is completed or the final contract value is determined. According to the difference between the provisional value and the insured value an additional premium will be charged or return pro rate if the provisional value is lower or higher.

However, should the insured value exceed the provisional value, then the indemnity under this insurance shall be limited to 125% of the provisional value of any one accident to series of accidents arising out of the same event.

This provision, however, shall not apply to any variation of the building cost of the insured vessel resulting from a material alteration in design, fittings or type of the vessel, i.e. one must obtain agreement from the insurer to keep the insurance valid in case the variation in value is on account of a material alteration to the building plans or fittings of the vessel or to a change in the type of vessel from that originally planned.⁴⁶

4.5.2.3 Insurable value by NMIP

The insurable value is described on §19-10 according the two situations.

On the one hand, subparagraph 1 defines when the newbuilding is ready for delivery. It constitutes (a) the original contractual building price plus subsequently agreed deductions, (b) subsequently agreed additional amounts mentioned in the policy, (c) the value of the

⁴⁶ See also Robert H. Brown, *Marine insurance- vol.3- Hull practice*, London, p757

buyer's deliveries which are covered by the insurance, and (d) subsidies, contributions, etc., provided that this is set out in the policy or transpires from circumstances in general.

The wording "subsequently agreed deductions" concerns changes which result in a reduction in the price. To avoid that the insurable value exceeds the assured's real loss, it is necessary to take such deductions into account in the calculation of the insurable value, regardless of whether or not the insurer has been notified.⁴⁷

The term "subsequently agreed additional amounts" refers to variation work in relation to the original contract which results in an increase in the price.

Buyer's deliveries are included in the insurance if this is set out in the policy or transpires from condition in general.

Subsidies and contributions are also included. The subsidies concerned are state subsidy schemes which are basically common to all European shipyards. The amount is paid to the yard after delivery of the newbuilding at fixed dates of payment twice a year. The subsidies are therefore an addition to the price and must be regarded as a part of the total value of the building project.⁴⁸

On the other hand, base on the fact that the insurable value in the builder's risk insurance increases concurrently with the investment made in the ship before the newbuilding is ready for delivery, the insurable value constitutes the value under subparagraph 1 with deductions for (a) the value of the work not performed, (b) the value of components and materials not manufactured or procured, and (c) the proportional share of the subsidies which applies to the deductions under the (a) and (b).

⁴⁷ Norwegian Marine Insurance Plan 1996, version 2010- Commentary, p455

⁴⁸ Norwegian Marine Insurance Plan 1996, version 2010- Commentary, p455

The assured in the event of a total loss before the time of delivery was entitled to “the value of the part of the newbuilding that was completed at the time of loss plus the value of components, etc., procured or manufactured for the newbuilding”. The rule entails that the yard will receive compensation for the profit element of the work that has been done.⁴⁹

4.5.3 Summary

4.5.3.1 Similarity

As we can see, PICC and ILU clauses have almost the same statements on the insurable value. Both of them allow the provisional value shown in the policy to be adjusted to the final contract price or the total building cost plus the builder’s percentage profit (whichever of the two is the greater) to establish an agreed value for insurance purposes. Where this result in increase in value, the sum insured is deemed to have also increased accordingly and the assured is required to pay a proportionate additional premium. Where the adjustment resulted in a decrease of the provisional value, the sum insured is deemed to have decreased accordingly and the assured is entitled to an appropriate return of premium. Increase is value required for material alteration to plans, fittings or type of ship requiring specific agreement from the insurer.

4.5.3.2 Difference

If compared to PICC clauses and ILU clauses, NMIP clauses have considerable differences regarding the insured value.

In the case of NMIP clauses, it is determined in two circumstances: when the newbuilding is ready for delivery and before the newbuilding is ready for delivery. The insurable value

⁴⁹ Norwegian Marine Insurance Plan 1996, version 2010- Commentary, p456

at the time of delivery is based on the contract sum plus subsequently agreed deductions and agreed additional amounts. The insurable value before the newbuilding is ready for delivery is calculated based on the contract price with deductions for work that has not been carried out and components and materials which have not been procured or made for the newbuilding.

Furthermore, no 125% limit as it is mentioned in the case of PICC and ILU clauses, nor the value of the buyer's deliveries is included in the insurable value in NMIP clauses. In this case ILU and PICC don't have the same practice. This practice transpires from § 19-9 (b)⁵⁰, which says that such deliveries are included in the insurance if this is set out in the policy or transpires from conditions in general. In that event, it is natural that also the value of these deliveries is stated in the policy and included in the insurable value. Actually, this practice is rather recommended.⁵¹ For instance, sometimes shipowner may order a specifically use ship, and in addition supply some equipment for the shipbuilding. The shipowner/buyer and the builder are usually named as co-insured. Consequently, in English and Chinese situations, the buyer's interest will not be protected in respect of loss of his supplies because the value of the equipments that buyer supplies is not included in the insurable value. However, this will be another case as the buyer will be satisfied with the Norwegian rules. To some extent, we could say that this Norwegian practice mostly tries to protect the interest of the assured.

⁵⁰ § 19-9 (b)[...] Components, equipment and materials supplied by the buyer are, however, only covered if this is set out in the policy, or transpires from circumstances in general.

⁵¹ See also Gao Linlin, *Research on the Builder's risk insurance*, Dalian Maritime University, p28

5 Peril covered

5.1 Introduction

An important question in relation to insurance is to establish the nature of the cover available to the assured, i.e. the scope of cover. This question can be divided into several questions. One such question is determining what risks are insured against. The second question is to define the casualty, or the incidence of loss the covered peril must materialize through to trigger the insurer's liability.⁵² Another question is what types of economic loss suffered by the assured are recoverable, i.e. what we can call the losses covered. One more question relates to the link between the perils insured against and the losses covered. As a consequence of a peril covered by the insurance, a casualty must have occurred and must in turn cause a loss which is covered by the insurance. This all means that we must clarify what constitutes a casualty and what requirements should be imposed with respect to causation.

Peril covered is the first question when dealing with the issue of the scope cover, which makes clear what kind of risk the assured is insured against.

A number of perils may represent a risk for the ship:

Natural calamities,

Negligence,

Fault made by workers, captain or crew,

Failure of launch,

Latent defect,

Political risks or risks connected to war.

⁵² Trine-Lise Wilhelmsen, Hans Jacob Bull, *Handbook of Hull insurance*, P79

Some of these causes, but not necessarily all of them, may be covered by the insurance.

Many of the provisions in the clauses regulate only one of the elements of the scope cover, Examples are NMIP clauses §19-1 which define the main rules concerning the peril the assured is insured against. Other provisions combine several elements. One example here is ILU clauses 5, which define the main rules for the peril covered. However, it excludes certain types of losses, such as including the cost of repairing, replacing or renewing any defective part condemned solely in consequence of the discovery therein during the period of this insurance of a latent defect. However, in no case does the cost cover of the renewing faulty welds.

In the following text, general comparison among these three systems will be treated in sub-chapter 5.2. The issue on the all risk principle and named risk principle is discussed in sub-chapter 5.3. And the issue on latent defect in sub-chapter 5.4.

5.2 Peril covered in different systems

In the follow up, six types of the main cover under Chinese rules are described in subchapter 5.2.1. The coverage under English law base on ILU clause 5 is illustrated in subchapter 5.2.2, and the peril covered in NMIP clauses is presented under §19-1 in subchapter 5.2.3.

5.2.1 Chinese system

The main cover according to PICC clauses § III

(1) Perils of the sea and nature

An insurance against marine perils cover, in the first place, perils of the sea and similar external perils. Perils of the sea, is peculiar to the seas, mean the perils represented by the forces of nature at sea seen in conjunction with the waters where the ship is sailing.⁵³ Though the ship is built in a dry dock where the sea character does not stand out, the ship still has to face a lot of peril from the sea during the time of trial and delivery, such as collision in fog or by wave, running aground, suffering heavy weather damage and breaking down by wind.

The peril of some catastrophe such as earthquake, volcanic eruption, lighting, tsunamis and floods which is hard to characterize as peril from the sea, can be concluded to the peril of nature⁵⁴. In PICC clauses §III 1(1) subscribes that natural calamities are covered.

(2) Fire and explosion

Fire is the most common and serious risk in the ship's construction. For instance, the carelessness or negligence by the workers may cause a fire. The highest equipment risk for shipbuilding is also from fire. In the ship's construction process, various heat sources are involved. In addition to this, welding, heating work, flammable liquids and materials, pipeline transportation of oxygen and acetylene, together with untreated hazardous gas, all increase the degree of risk, explosion for example. Furthermore, perils of fire and explosion, arise in some part of the ship under construction, may later spread to the other part even the whole ship or other ships which are under construction in the shipyard.⁵⁵

(3) Weakness in the ship and similar “internal peril”

Weakness in the ship and similar “internal peril” are in principle regarded as perils covered by an insurance against marine perils.

⁵³ See Trine-Lise Wilhelmsen, Hans Jacob Bull, *Handbook of Hull insurance*, p 81

⁵⁴ PICC clauses § III 1(1)

⁵⁵ See also Yang Weidong, *Research on the related law issues of Chinese shipbuilding*, Fudan University, 2006

For instance, latent defects in hull, machinery and equipment in PICC clauses §III 1(3), and faulty design of any part or parts of the insured vessel in PICC clauses § III 1(5).

These more “technical” perils are of quite a different character from the perils of the sea, and traditionally the cover connected to these perils was very restricted. During the past years this cover has been gradually extended. The starting point today is that cover is provided both for damage caused by inadequate maintenance, wear and tear and corrosion and for damage caused by error in design or material.

(4) Injurious acts by third parties

Injurious acts by third parties will basically be perils that are covered by an insurance against marine perils. Examples are errors made by another ship or operators of other installations coming into contact with the insured ship during the time of trial and delivery. Errors may also result in collision, explosions or fire on land or on another ship spreading to the insured ship, damage caused by bridges or cranes falling down on the ship both during the time of building and the time of trial and delivery.

It is irrelevant whether or not the person causing the damage is blameworthy, damage caused intentionally will also be covered. The same holds for criminal acts, for instance thefts by persons from outside the vessel or destruction. The loss of tools or equipments will slow the progress of ship construction. However, if the criminal acts take the form of piracy or mutiny they will be covered by separate war insurance.⁵⁶

(5) Errors and negligence from the master, crew, workers, technicians, and other helpers

As a starting point, the insurer is liable for losses caused by fault by the assured's servants and other helpers. Damage caused by the assured's helpers is thus treated the same

⁵⁶ Trine-Lise Wilhelmsen, Hans Jacob Bull, *Handbook of Hull insurance*, p84

way as damage caused by third parties. Similarly, it does not matter whether or not the helpers are employed by the assured, or organized as separate entities.⁵⁷

According to PICC clauses § III 1 (2), the company shall be liable for loss of and/ or damage to, and liability and expenses in connection with the insured vessel by negligence, fault and lack of skill of workers, technicians, master, crew and pilots.

This loss results from either the risk of fault, negligence, or lack of skill, either make by workers, technicians, master, crew or pilots who is working for the assured⁵⁸.

The key point here is that PICC clauses do not expand this peril to the acts or omissions by the assured. Thus, if the assured's acts or omissions result in a casualty without intervention of any of the named perils listed conditions, this will not be covered.

(6) Peril of unsuccessful launching

This is a peril that is special in the builder's risk insurance for a ship under construction. Once the main work in dry dock is finished, the new built ship need a launch as a quality test before delivery of the newbuilding to the buyer/ shipowner.

There are various methods adopted for launching ships. The most common for a large ship is to slide it down a prepared slipway into the deep water. Sometimes the launch fails, for instance, because of some problem of slipway. Sometimes the failure launch causes accident and damage to the hull.⁵⁹ Sometimes no accident occurs, and then the expense is incurred to remedy the failure situation, so that the launch can be completed.⁶⁰

⁵⁷ Trine-Lise Wilhelmsen, Hans Jacob Bull, *Handbook of Hull insurance*, p85

⁵⁸ PICC clauses § III 1 (2)

⁵⁹ See also Yang Weidong, *Research on the related law issues of Chinese shipbuilding*, Fudan University, 2006

⁶⁰ PICC clauses § III 1 (6)

5.2.2 English law

There is a wide coverage in ILU clauses. From provision 5 of ILU clauses, it is clearly to get that the underwriters indemnify the builder against all risks of loss of or damage to the subject-matter insured caused and discovered during the period of the insurance. And the underwriters bear also the risk in case when the launching of the insured vessel is unsuccessful, then the builder needs extra cost in completing the same:

5. PERILS

5.1 SUBJECT ALWAYS TO ITS TERMS, CONDITION AND EXCLUSIONS this insurance is against all risks of loss of or damage to the subject-matter insured caused and discovered during the period of this insurance including the cost of repairing, replacing or renewing any defective part condemned solely in consequence of the discovery therein during the period of this insurance of a latent defect. In no case shall this insurance cover the cost of renewing faulty welds.

5.2 In case of failure of launch, the underwriters are to bear all subsequent expenses incurred in completing the launch.

As a starting point, this implies that the insurance against the builder's risk in respect of loss or damage to the vessel is based on the all risks principle. That is the insurance that in principle covers all the loss and damage to the vessel, but with exclusion specifically listed out.

“All risks” cover would embrace loss or damage caused by latent defects, but would not, in itself, embrace the mere discovery of a latent defect. A latent defect is a defect which could not be discovered by a person of competent skill and using ordinary care.⁶¹

Cover in H & M policies is seldom extended to embrace replacement of or repair to the part with latent defect, and invariably excluded any claim for replacing or repairing any

⁶¹ Case “Dimitrios-v-Rallios” (1922)

defective part of a latent defect. The ILU builder's risk insurer, on the other hand, takes a wider view in that the above quoted "including the cost of repairing replacing or renewing any defective part condemned solely in consequence of the discovery therein during the period of this insurance of a latent defect".⁶² In practice, a defect in the materials used in ship construction might lie dormant only to be discovered by a surveyor during tests prior to or after installation. It is suggested that, in such case, although the defect is discovered "during an ordinary inspection" it would, nonetheless, be deemed to be a "latent defect for the purposes of the cover in the ILU clauses."⁶³

5.2.3 Peril covered by NMIP

Builders' risks insurance rules in Chapter 19 of NMIP are based on Cefor Form 250⁶⁴, which is in turn based on Institute Clauses for Builders' risks. Builders' risks insurance is, in addition to the provision in chapter 19, also subject to the provisions in the general part of the Plan (chapter 1-9), and the rules in chapters 10 to 12, insofar as this transpires from chapter 19, section 2.⁶⁵

The peril covered in NMIP clauses is presented in §19-1: The insurance covers marine perils, cf. § 2-8, and strikes and lock-outs. At a starting point, the builders' risks condition corresponds to the general condition of perils covered by an insurance against marine perils in § 2-8 of NMIP which is based on an all risks principle.

Furthermore, the builders' risks insurance rules in Chapter 19 of NMIP is indirectly based on the Institute Clauses for Builders' risks which is also based on an all risks principle as we have discussed above.

⁶² See also Robert H. Brown, *Marine insurance- vol.3- Hull practice*, London, p762

⁶³ Robert H. Brown, *Marine insurance- vol.3- Hull practice*, London, p762

⁶⁴ Cefor- The Nordic Association of Marine Insurers, Cefor represents marine insurers in the Nordic countries. Cefor Form 250 presents the conditions for insurance of builder's risks in Norway

⁶⁵ See also Norwegian Marine Insurance Plan 1996, version 2010- Commentary

Moreover, the perils strikes and lock-outs which are considered as war risks are also covered by the NMIP clauses in the condition of builders' risks. NMIP Clauses § 2-9 (c) describes that riots, sabotage, acts of terrorism or other social, religious or politically motivated use of violence or threats of the use of violence, strikes or lockouts are covered by an insurance against war perils.

“Strikes” occur where employees in one or more enterprises cease work according to a joint plan and with a joint motive.⁶⁶

“Lockout” entails that one or more employers shut the employees out from the work place, normally as part of an ongoing wage conflict.⁶⁷

It is generally agreed that in the builder's risk insurance limit the range of perils to the marine perils. War risks are usually excluded from standard insurance policies and have to be specifically included on payment of additional premium or through a separate policy, which is generally accepted by the world insurance market.

The reason is that, the war risks, such as riot, sabotage, piracy and mutiny, today occur primarily during trial runs and deliveries in “exotic waters”, and must in future be insured against under a separate war risks insurance.⁶⁸

However, some of the war risks, such as strikes and lock-outs, are big perils that the builders as employers will meet during the time of construction building. Ship building is a kind of construction project which is widely recognized as high risk, involved in the work where damage or injury accident often happens.

⁶⁶ Norwegian Marine Insurance Plan 1996, version 2010- Commentary part 1 p42

⁶⁷ Norwegian Marine Insurance Plan 1996, version 2010- Commentary part 1 p42

⁶⁸ See also Norwegian Marine Insurance Plan 1996, version 2010- Commentary

Therefore, the assured has the need for cover against strikes and lockouts while the newbuilding is in dock and must be in addition resolved through the ordinary marine peril cover.

Further, this addition is also followed by exception. The cover against strikes and lockouts must be seen in conjunction with the fact that the builder's risk insurance is a hull insurance, possibly a liability insurance, for the yard. The insurer will therefore will only become liable if a strike or lockout results in damage to the newbuilding or components, material etc., possibly liable for damages for the yard for damage inflicted on a third party. It is not sufficient to trigger the right to payment under the builders' risks insurance that a strike or lockout results in a delay.⁶⁹

All in all, the description of the perils included under the insurance entailed that the builder's risk insurance was an insurance against marine perils, but included certain perils, strikes and lock-outs, which normally belong under the war risk cover, as well as in Norwegian situation.

Eventually, the peril covered principle has become different from both the named risks principle in Chinese situation and all risks in English condition. As we have mentioned above in chapter 5.2.1 and 5.2.2, there is a kind of combination in Norwegian case, i.e. at the starting point, it is led by an "all risks" principle to cover marine perils which is expressly addressed to cover all perils to which the interested may be exposed. In addition to that a "named risks" principle which is normally used by an insurance against war perils, adds under the coverage the additional two war risks, strikes and lock-outs. See more discussion on this issue in the later chapter 5.3.

⁶⁹ Norwegian Marine Insurance Plan 1996, version 2010- Commentary

5.3 Issues on the all risks principle and named risks principle

Insurance policies decide what they will cover and what they won't through two different approaches: "all risks" or "named risks".

After comparison, it is easy to find out that the PICC clauses are based on a named risk principle. On the other side, all risks principle is used in ILU and a special "all risks" plus "named risks" in NMIP.

Let us have a look at more differences between these two approaches before the analysis.

First of all, the primary distinction between them is the coverage. "All" is obviously wider than "named", as this can be easily recognized from the names. However, it can not be simply concluded that ILU clauses and NMIP clauses have wider coverage than PICC clauses.

Named risks principle is to be covered for damage or loss under a "basic" contract. The damage or loss must be caused by a peril that is "named" or listed in the contract. Consequently, if damage or loss is caused by a peril that is not named, there is no coverage. On the contrary, when the intent is to cover all risk of damage or loss and it is hard to name or list the insured perils, all risks principle will be chosen.

However, the all risks coverage should not be misunderstood to cover all risk without any limitation. Actually the contract's exclusions must also be considered in determining coverage both "all risks" and "named risks". Therefore certain types of risk are not insurable if they are specifically listed out. Perils covered by Norwegian insurance against marine perils cf. §2-8 will be a good example. An insurance against marine perils covers all perils to which the interest may be exposed, with the exception of: (a) the perils covered by an insurance against war perils in accordance with §2-9, (b) intervention by a state power, (c) insolvency, (d) perils covered by the RACE II clause.

In addition to this, another argument is that PICC clauses cover loss or damage and expense caused by natural calamities and/ or accidents in III 1(1), while ILU clauses exclude earthquake and volcanic eruption which is normally including in natural calamities and/ or accidents.

Furthermore, one more essential difference between them is the burden of proof.

We will notice that the choice of an “all risks” technique or of a positive list of perils insured against (a “named risks”) does affect one important matter and that would be the burden of proof that a casualty was or was not caused by a peril insured against. What then is meant by the law phrase “burden of proof”? Put in its simplest form it means that one or other party must bear the risk of there being a lack of evidence as to what exactly has happened.⁷⁰

In the context of the perils insured against it means that for an assured under the ILU clauses is enough that he established that there has been an accidental loss. It is not necessary for him to be able to explain exactly how the loss took place. It is then for the insurer to prove that there is an exception which excuses him from liability, namely the insurer must, if he wishes to escape liability, establish that a loss was probably caused by an excepted peril.⁷¹ Since an “all-risks” policy provides coverage for all losses not specifically excluded, once the assured has proven his loss, the burden then shifts to the insurer to prove that the loss was caused by a peril specifically excluded.

On the other hand, the burden of proof under a “named perils” insurance policy, i.e. PICC clauses, is rather different. Like under an “all-risks” policy, the assured must initially prove that there was a loss. Once this has been shown, however, the burden does not generally shift to the insurer to prove that the loss was not covered. Instead, the assured is required to

⁷⁰ Nicolas Wilmot, *The contract of Marine insurance in English and Norwegian law*, Institute of private law, University of Bergen, p 6/4

⁷¹ Nicolas Wilmot, *The contract of Marine insurance in English and Norwegian law*, Institute of private law, University of Bergen, p 6/61

prove that the damages sustained were caused by a peril insured against.⁷² He will be unable to recover if he cannot establish it.

Similarly, under NMIP clauses, it is normally sufficient for the assured to prove that he has an insurable interest, that he has suffered economic loss of the kind covered by the policy in respect of that interest and that the economic loss was a result of a casualty as defined. Then in case of war perils, strikes and lock-outs, the assured has also the burden of proving under a “named risks” policy that the interest was “struck” by the strikes or lock-outs which are covered by the insurance.

Let’s illustrate an example as following:

Presuming that there was a fire happened on the under-building ship, and that some part of the hull was damaged.

Under ILU clauses which are based on “all risks” principle, what the assured need is only to prove that he has suffered economic loss of the damaged hull and this loss is covered by the valid policy. Then it is the burden for the insured to prove that this casualty was caused by a peril specifically excluded to escape his liability. For instance, the fire was caused by the earthquake or volcanic eruption which is expressly excluded according to § 6 of ILU clauses.

However, the same case under PICC clauses which are based on a “named risks” principle where the assured is required to prove not only that he has suffered economic loss, but also that the damages sustained were caused by a peril insured against. For example, the fire was caused by the earthquake or volcanic eruption which is included according to clauses § III 1(1) of PICC clauses.

⁷² <http://www.condominiuminsurancelaw.com/2011/01/articles/condominium-associations/what-type-of-policy-do-you-have-and-why-does-it-matter/>

When it comes to the case of NMIP clauses, the case is rather interesting. As we have discussed above, NMIP clauses are based on “all risks” plus “named risks” principle. The assured will prove that he suffered economic loss and then the burden of proof will be shifted to the insurer. If he can provide the proof that the casualty was caused by a peril specifically excluded, for example that a fire was caused by sabotage which is expressly excluded according to § 2-8 of NMIP clauses because it covered under war perils insurance therefore uncovered by marine perils, then he get the chance to escape the responsibility by managing to find prove of sabotage or other war peril. In this case, the burden will be shifted back to the assured, who must then be able to demonstrate that the actual cause was strike or lock out. If so, then the insurer has no excuse for his responsibility, even if there comes to a question of the combination of marine and war perils under § 2-14 of NMIP in normal case.

In conclusion, considering the burden of proof, the position of the assured is much easier under an “all risks” than a “named risks”.

5.4 Issue on the latent defects

5.4.1 Introduction

“A latent defect is a defect which would not be discovered by a person of competent skill and using ordinary care”. This definition quoted in the case of “Dimitrios-v-Rallios (1922)” regarding the meaning of the term “latent defect”.

The following three examples should assist in understanding the latent defect cover. For simplicity the policy deductible is ignored in the examples: ⁷³

⁷³ Robert H. Brown, *Marine insurance- vol.3- Hull practice*, London, p762

A piece of machinery was damaged during transit between the manufacturer's premises and the builder's premises. The damage was not discovered until the machinery was unpacked prior to installation. There would be no claim under the policy for repair or replacement of the machinery, even though the damage thereto was discovered during the period covered by the policy, because the damage did not constitute a latent defect and occurred before the policy period attached.

A piece of machinery had a latent defect in the metal from which it was constructed. When the machinery was tested, following its installation in the ship, the vibration caused the metal with the defect to break. The accident caused damage to the machinery mounting. The machinery was condemned, solely because of the latent defect, and was returned to the manufacturer for replacement. There would be a claim under the policy for the repairs to the machinery mounting, plus the cost of replacing the machinery. The insurer may be able to exercise his subrogation rights to recover some of his loss by taking legal action for damages against the manufacturer of the machinery.

A girder had a latent defect in the metal from which it was constructed. The girder was allocated to the ship's contract number before it was delivered to the builders' yard, where it was stored pending use in construction of the ship. Prior to use, the girder was examined by a surveyor for defects. The surveyor discovered the defect and condemned the girder. However, it should be noted that the claim would not have attached to the policy if the defect has been discovered before the girder was allocated to the ship (e.g. the girder had been one of a number of stock items in the yard which were being examined prior to allocation to the ship).

In the following, the concept of "latent defects" and some starting points will be overviewed in subchapter 5.4.2. In addition to that, the "latent defect" covered under ILU clauses is discussed in subchapter 5.4.3, the PICC and NMIP clauses will be treated

respectively in subchapter 5.4.4 and 5.4.5, and a short summary concludes in subchapter 5.4.6.

5.4.2 The concept of “latent defects” and some starting points

The coverage for latent defects has developed gradually since the so-called Inchmaree clause was introduced as a part of the first edition of the English hull insurance clauses at the Institute Time Clauses Hulls in 1888. For better understanding the peril of latent defects covered under the builders’ risks insurance, as a starting point it is important to have a look at the case *Thames and Mersey Marine Insurance Co Ltd v Hamilton, Fraser and Co, Inchmaree*, [1887] 12 AC 484, from which the Inchmaree Clause originated:

Inchmaree was a steamship insured under a time policy, wherein the risks insured against included perils of the seas and “[...] all other perils, losses and misfortunes that have or shall come to the hurt, detriment, or damage thereof of the aforesaid subject matter of this insurance, or any part thereof”. Whilst lying at anchor awaiting orders, it became necessary to pump up the main boilers by means of the donkey engine. However, a valve in the pipeline between the donkey engine and one of the boilers was closed. The result was that the donkey engine became over-pressurized and was damaged. The claim for the cost of repairing the donkey engine was denied as the bursting of the boiler was not a peril of the sea or “all other perils” as the peril was not “of a marine character”.

The denial of the claim in this case resulted in the inclusion of the Inchmaree Clause in the first version of the Institute Time Clauses : [...] loss of, or damage to hull or machinery through the negligence of master, mariners, engineers, or pilots, or through explosion, bursting of boilers, breakage of shafts, or through any latent defect in the machinery or hull: provided such loss or damage has not resulted from want of due diligence by the owners of the ship, or any of them, or by the manager[...]

A latent defect in such a context is generally regarded as meaning ‘a defect of material in respect either of its original or after acquired condition;’⁷⁴ and which ‘could not be discovered on such an examination as a reasonably careful skilled man would make.’⁷⁵

The expression “defect” means deficiency, imperfection, error or failure. As there is no requirement connected to the cause of the defect, the wording implies that any kind of defect should be covered.⁷⁶

The expression “latent” is synonymous with “hidden”, “concealed” and “dormant”, or “that which does not appear on the face of a thing”. Thus, in order to be covered, the defect must be hidden or concealed.⁷⁷ See also *Tropical Marine*, supra, the Court stated that the classic meaning of the term "latent defect" was as follows: "A latent defect is one that could not be discovered by any known or customary test," [. . .] and "[. . .] is a hidden defect and generally involves the material out of which the thing is constructed as distinguished from the results of wear and tear." [. . .] It is "A hidden defect [. . .] not manifest, but hidden or concealed, and not visible or apparent; a defect hidden from knowledge as well as from sight, [. . .] a defect which reasonably careful inspection will not reveal; one which could not have been discovered by inspection [. . .] by any known and customary test."

One more question is to be discussed: does the coverage of “latent defect” extend to error in design?

In the absence of provision to the contrary, it seems that “latent defect” does not normally extend to defects in design. In *Jackson v Mumford case*⁷⁸, during the course of trials, a main engine con-rod broke, shattering the cylinder cover and killing eight men. Having

⁷⁴ *Jackson v. Mumford* (1902) 8 Com. Cas. 61

⁷⁵ Per Porter J. in *Charles Brown & Co. Ltd. and Others v. Nitrate Producers Steamship Co. Ltd.* (1937) 58 Ll.L.Rep.188 at page 191, approved by Goff J. in *The “Caribbean Sea”*, infra.

⁷⁶ Trine-Lise Wilhelmsen, *Hull insurance of “Latent defects”-i.e.Errors in Design, Material or Workmanship*, Stockholm institute for Scandianvian Law 1957-2010, p273

⁷⁷ Trine-Lise Wilhelmsen, *Hull insurance of “Latent defects”-i.e.Errors in Design, Material or Workmanship*, Stockholm institute for Scandianvian Law 1957-2010, p275

⁷⁸ [1902] 8 Com. Cas. 61.

found that the cause of the failure lay in the inadequate design of the con-rod, Kennedy J. declined to categorize this as a “latent defect”. In his view:

“[...] while the proper effect to be given to the word ‘latent’ [...] may vary with circumstances [...] the phrase ‘defect in machinery’ in the Inchmaree clause meant ‘a defect of material, in respect of either its original composition or in respect of its original or its after acquired condition’ [...] It does not, in my view, cover the erroneous judgement of the designer as itself being faultless, the workmanship faultless, and the construction precisely that which the designer intended it to be” (p. 69).

However, case *Prudent Tankers Ltd. S.A. v. The Dominion Insurance Co. Ltd., The Caribbean*⁷⁹, questioned the result of *Jackson v Mumford*, held that the fact that the origin of a defect lay in inadequate design did not prevent it from being “latent” within the meaning of the standard “Inchmaree” clause.

English court practice is thus not very clear concerning the distinction between “defect” and error in design. According to Arnould, § 831, one must make a distinction between a “shortcoming” which is not a defect, and a “defect” in machinery. There is merely a “shortcoming” if “an item of machinery functions correctly in accordance with its design specifications, but damage is caused to other parts because the machinery was unsuitable for that vessel.” If, however, “there is some malfunction of an item of machinery caused by an error in its design” this may constitute a defect.⁸⁰ Namely, the error in design falls into the coverage of “latent defect”, but only if the error in design resulting in failure function of any part or parts of the insured vessel.

5.4.3 The “latent defect” covered under ILU clauses

⁷⁹ See case [1980] 1 Lloyd’s Rep. 338 at pp. 345-346.

⁸⁰ Trine-Lise Wilhelmsen, *Hull insurance of “Latent defects”-i.e .Errors in Design, Material or Workmanship*, Stockholm institute for Scandinavian Law 1957-2010, p274

To the extent that the cover has attached, the underwriters agree to indemnify the builder against in Clauses 5.1:

“All risks of loss [...] or damage to the subject matter insured caused and discovered during the period of this insurance including the cost of repairing replacing or renewing any defective part condemned solely in consequence of the discovery therein during the period of this insurance of a latent defect. In no case shall this insurance cover the cost of renewing faulty welds.”

Except that it does not encompass faulty welding, “latent defect” is used but still left undefined in ILU clauses. The term has, however, been categorized in another maritime context as referring to defects as we have illustrated in the starting point above “which could not be discovered on such an examination as a reasonably careful skilled man would make”.⁸¹ Namely, the builder will therefore be required to demonstrate that the defect in question could have not been detected through the application by his representatives at the shipyard for reasonable quality control techniques. The defect must be discovered before the expiry of the provisional period.

As a starting point, “all risks” cover would embrace loss or damage caused by latent defect, but would not, in itself, embrace the mere discovery of a latent defect. This term has been the subject of much litigation over the years.⁸² Such litigation has been concerned with loss or damage “directly caused by” a latent defect, i.e. consequential damage, in the hull or machinery of an insured ship, but cover in H & M policies is seldom extended to embrace replacement of or repair to the part with the latent defect, i.e. primary damage, and invariably excluded any claim for replacing or repairing any defective part of the ship or machinery arising from the mere discovery of a latent defect.⁸³

⁸¹ The Caribbean Sea Case [1980] 1 Lloyd’s Rep. 338 pp. 347-348. See also Arnould §831 note 52 and 53 and The Amsstelslot [1963] 2 Lloyd’s Rep 223 (HL).

⁸² See J.K. Goodacre, *Marine Insurance Claims*, Witherby & Co. Ltd

⁸³ Robert H. Brown, *Marine insurance- vol.3- Hull practice*, London, p762

The ILU builder's risk insurer, on the other hand, takes a wider view in that the above quoted Clauses 5.1.⁸⁴

In practice, a defect in the materials used in ship construction might lie dormant only to be discovered by a surveyor during tests prior to or after installation. It is suggested that, in such case, although the defect is discovered "during an ordinary inspection" it would, nonetheless, be deemed to be a "latent defect" for the purposes of the cover in the ILU clauses. Therefore, ILU clauses covers, not only the cost of replacing, repairing, etc. the defective part that manifests itself by causing loss or damage, but also the cost of replacing, repairing, etc. of any part condemned solely because a latent defect is discovered therein.

Exclusion applies here on faulty welds which are usually resulted from "faulty workmanship". This limitation is due to a basic reluctance to cover the yard's costs of rectifying a fault due simply to poor workmanship on welding.

Cover is also provided under the ILU clauses 8 for the risk of loss of or damage caused by "faulty design":

8. FAULTY DESIGN

Notwithstanding anything to the contrary which may be contained in the Policy or the clauses attached thereto, this insurance includes loss of or damage to the subject-matter insured caused and discovered during the period of this insurance arising from faulty design of any part or arts thereof but in no case shall this insurance extend to cover the cost or expense of repairing, modifying, replacing or renewing such part or parts, nor any cost or expense incurred by reason of betterment or alteration in design.

In any event, the policy does not cover the cost or expense of repairing, modifying, replacing or renewing the part, with the faulty design, which caused the loss or damage; nor

⁸⁴ See also Robert H. Brown, *Marine insurance- vol.3- Hull practice*, London, p762

does the policy reimburse the assured for any cost or expense incurred for betterment or alteration to the design.

Take a case for example:

A ship is being constructed to a plan which incorporates a double bottom with an open floor design. Due to faulty design the docking brackets bend when subjected to a test load on the hold ceiling. The stress causes the hold ceiling plates to buckle and bends the angle supports on either side of the docking brackets. Subject to the policy deductible, the insurer would be liable for loss or damage caused by latent defect, i.e. the cost of replacing the buckled hold ceiling plates and the bent angle supports. The insurer would not be liable for the latent defect itself, i.e. the cost of replacing the docking brackets, nor would the insurer be liable to reimburse the assured, or the supplier, for the cost or expense of re-designing the docking brackets.

5.4.4 PICC clauses § III

PICC clauses cover loss or damage and expenses caused by latent defects in hull, machinery and equipment as it is expressly illustrated in clause III 1(3), as well as faulty design of any part or parts of the insured vessel in clause III 1(5).

The same as ILU clause, PICC clauses also use the term “latent defect” in clauses and don’t have the explanation of the concept. However, the interpretation can be cited from the English case law that we have discussed above at the starting point and the situation under ILU clauses.

As a starting point, the coverage provides loss or damage and expenses caused by latent defects in the subject-matter insured is the same as in the English situation. While the distinction between ILU clauses and PICC clauses is presented considering a different

starting point, namely ILU clauses base on an “all risks” principle and a “named risks” principle works in PICC situation.

Compare to ILU clauses, PICC clauses, which are based on a “named risks” policy, limit the coverage not only regarding the subject-matter insured just to hull, machinery and equipment, but also the fact that they do not extend to the risk of repair cost, replacing or renewing the defective part itself which is not expressly mentioned in provision.

Furthermore, according to “faulty design”, PICC clauses maintain ILU’s practice by expressly covering the loss or damage and expenses caused by faulty design of any part or parts of the insured vessel in clause III 1(5) as well as excluding the expenses for repairing, modifying, replacing or remaking the part or parts of faulty design, and any expenses incurred for betterment or alteration in design in clause IV 2.

5.4.5 NMIP concerning this issue

As a starting point, similar to ILU situation, NMIP clauses also base on an “all risks” which coverage would embrace loss or damage caused by latent defect, but would not, in itself, embrace the mere discovery of a latent defect.

Different from the situations of ILU and PICC, the NMIP does not use the concept of a “latent defect”, while this issue can be referred to the general hull insurance under clauses § 12-3 and § 12-4. These kinds of perils are rather divided into two main groups. The first group consists of “wear and tear”, “corrosion”, “rot”, “inadequate maintenance” and “the like”. For this group the rule is that the insurer will not be liable for the part or parts of the ship that were in a defective condition (“primary damage” in Norwegian terminology), but will pay for any consequential damages caused by the mentioned perils unless the more extensive exclusion in the second subparagraph applies. The second group consists of error in design or material, where coverage is provided both for damage to the part not in proper

condition and for consequential damage, unless the part is not approved by the classification society.⁸⁵

However, according to § 19-14, § 12-3 and § 12-4 is not applied if the newbuilding or components etc. have been damaged without total loss:

§ 19-14. Damage/Re. chapter 12

If the newbuilding or components etc. have been damaged without § 19-11 or § 19-12 being applicable, the rules in chapter 12 shall apply, with the exception of § 12-3, § 12-4, § 12-5 (d), (e) and (f), § 12-6 and § 12-15 to § 12-18.

On the other hand, it is stipulated in NMIP clauses § 19-15 that limitation of the insurer's liability/Re. § 12-1: if the damage is a result of faulty construction, faulty workmanship or faulty material, the insurer is not liable for the costs of renewing or repairing the part or parts of the hull, machinery or equipment which were not in a proper condition.

Namely, if a case of faulty construction or faulty workmanship regarding the steering gear results in the newbuilding running aground during the trial run, the grounding damage will thus be recoverable, but not the costs of repairing or replacing the steering gear.

All in all, NMIP does not use the concept of latent defect, but rather define this issue into "faulty construction", "faulty material" and "faulty workmanship".

"Faulty construction" is translated from the Norwegian phrase "Konstruksjonsfeil" which rightly translated is synonymous with "error in design". Thus "faulty in construction" according to the quoted comment should rightly have been "error in design". Faulty

⁸⁵ Trine-Lise Wilhelmsen, *Hull insurance of "Latent defects" - i.e. Errors in Design, Material or Workmanship*, Stockholm institute for Scandinavian Law 1957-2010

construction refers to faults in the designed method of constructing the ship; this includes a choice by the designer of unsuitable method of assembly.⁸⁶

“Faulty material” means that the material in a part of the ship (hull or machinery) is of a quality inferior to the presupposed standard. Such a quality deficiency may, for example, be due to a defect in casting or some other fault in the structure of the material which occurred during processing, or to the supplier of the material having delivered a quality which is not in accordance with the specifications he has stated (e.g. that the steel supplied is too brittle).⁸⁷

“Faulty workmanship” is where the choice of materials, the dimensioning or the actual workmanship, e.g. the welding, is contrary to the designer’s directions or generally recognized building standards. Damage due simply to accidents during work, e.g. fire damage resulting from negligence during welding, or hull damage arising by the newbuilding keeling over as a result of inadequate support in the building dock shall, however, not be regarded as “faulty workmanship”. The dividing line between “faulty workmanship”, etc., and mere accidents during work must furthermore be decided on a case-to-case basis in practice.⁸⁸

As we have discussed and concluded above, NMIP clauses are based on an “all risks” plus “named risks”. Therefore, as a starting point, the cover embraces loss or damage caused by “faulty construction”, “faulty material” and “faulty workmanship”, which are clarified according to the main rule concerning liability of the insurer in § 12-1. However, according to § 19-15, the coverage would not, in itself, embrace the mere discovery of these faults which are relatively different from the ILU situation.

⁸⁶ See also Nicolas Wilmot, *The contract of Marine insurance in English and Norwegian law*, Institute of private law, University of Bergen, p 6/19.

⁸⁷ Norwegian Marine Insurance Plan 1996, version 2010- Commentary p252

⁸⁸ Norwegian Marine Insurance Plan 1996, version 2010- Commentary p462

5.4.6 Summary

All in all, the approach to coverage for the risk of latent defects, error in design, material and workmanship in particular, in English, Chinese and Norwegian builder's risk insurance is different.

The most extensive difference is the starting point and the range of coverage.

Where the English system and Norwegian system relating to marine perils are based on all risk coverage implying a wide coverage for these defects, the starting point in the Chinese system is the reverse: coverage is for named perils only combined with exclusion.

According to the all risks principle, as the starting point, ILU clauses and NMIP clauses firstly cover all risks that contribute to the damage. The coverage includes both the primary damage and the consequential damage. Primary damage appears if the defective part constitutes damage, while consequential damage arises when an unknown defect during the insurance period, results in a casualty or damage to other parts.

There are exceptions when the insurance is not extend to cover the cost or expense of repairing, modifying, replacing or renewing such defected part or parts in case of ILU because of faulty design and faulty welding as well as faulty construction, faulty material and faulty workmanship in case of NMIP.

On the other hand, based on a named perils principle, PICC clauses cover only the risks that are listed out. As only the loss or damage i.e. consequential damage, caused by latent defects in hull, machinery and equipment is expressly illustrated in the clauses, implying that the coverage will not extend to the cost of repairing, replacing or renewing the defective part itself no matter which constitutes damage or not because of the defect.

In addition, faulty design of any part or parts of the insured vessel is also covered. It also refers only to the consequential damage, where for the primary damage and the defective part or parts without constitute, damages are clearly excluded.

In a word, regarding to the exception for primary damage and the defective part or parts without constitute damage, the difference is shown among these three situations. ILU clauses exclude faulty welding and faulty design, PICC clauses exclude all and NMIP clauses exclude faulty construction, faulty workmanship and faulty material.

6 Conclusion

The Institute Builder's Risk Clauses (ILU clauses), the People's Insurance Company of China Builders' risk insurance clauses (PICC clauses) and the Norwegian Marine Insurance Plan of 1996 (NMIP clauses) are the main regulations governing builder's risk insurance in UK, China and Norway.

After the comparison, the differences between the clauses regarding the builder's risk insurance gradually emerge to the surface. This has been demonstrated in chapter 4 where the four subjects, insurance period, subject-matters insured, place of insurance and insurable value were discussed.

Although many similarities show up since the mutual influence among them, it is more interesting to put emphasis on the differences.

Take the issue of place of insurance for example. PICC, ILU and NMIP clauses all include time periods during the building and during the trial and delivery. They also state that any movement requires previous notice and agreed additional premium to underwriters. However, according to the period during trial and delivery, PICC clauses indicate that the rule depends on the gross tons of the vessel. ILU clauses simply refer to the water distance of 250 nautical miles between the port and the place of construction. NMIP, on the other hand, rules that the insurance comprises trial runs within the area allowed by the newbuilding's provisional certificates instead of corresponding to ILU's practice.

Furthermore, peril covered is also a good case in point since we have explored more the law systems.

We have discovered that PICC clauses are based on named risks principle. In contrast to that, all risks principle is used in ILU and a special “all risks” plus “named risks” in NMIP. The regulations on the “latent defect” between them are distinct by the partial influence of this different principle.

All in all, the conclusion results not only in similarities and differences, but also brings up some problems in Chinese situation.

Firstly, a great part of the clauses in PICC are unfortunately full of generality and fail to get down to specifics. For instance, when subject-matters insured is concerned; PICC clauses generally mention all the materials, machinery and equipment necessary in building the Insured Vessel. Due to this generality, difficulties, such as how to define the specific subjects, do the buyer’s supplies be covered or not and in which way they will be covered in practical, will be encountered when the parties apply clauses in Chinese situation.

Furthermore, the peril covered in Chinese clauses is based on “name risks principle” which the assured carries heavier burden of proof than insured. A conclusion that “all risks principle” is better than “name risks principle” is hard to meet. The point is, since the insurance rate of builder’s risk insurance in China is relatively low, there is a bigger need to encourage the Chinese assureds to engage into or behave more actively in the builder’s risk insurance market. The relatively heavier burden of proof for the assured in Chinese practice gives us just the opposite of what we intended.

Conclusion is also ground further on the worth of borrowing and learning from. Some sounds practices in NMIP clauses would be good examples.

Regarding subject-matters insured, NMIP clauses use enumeration method to decide which can be specified in the construction of insurance protection. For instance, the newbuilding, components, equipment and materials manufactured or procured for the

newbuilding, comparing to the generally mention in PICC clauses and ILU clauses. NMIP clauses, in addition, especially include the items such as the yard's costs in connection with drawings and bunkers and lubricating oil on board which in the case of China and UK are not mentioned.

Moreover, the rule of place of insurance in NMIP provides that the insurance comprises trial runs within the area allowed by the newbuilding's provisional certificates instead of the rule of limit trial runs within an area of 250 nautical miles. The reason why it was nevertheless decided to base the trading limits on the provisional certificates is partly that the certificate requirement is absolutely fundamental in relation to the operation of the ship, and partly that buyer and shipyard must therefore be expected to ensure that these papers are in order.

Furthermore, concerning about the insurable value, NMIP doesn't includes 125% limit as it is stated in the case of PICC and ILU clauses, nor the value of the buyer's deliveries is included in the insurable value. In this case, UK and China don't have the same practice. This practice transpires from § 19-9 (b)⁸⁹, which says that such deliveries are included in the insurance if this is set out in the policy or transpires from conditions in general. In that event, it is natural that also the value of these deliveries is stated in the policy and included in the insurable value. Actually, this practice is rather recommended.⁹⁰ By this practice, the interest of the assured will mostly be protected.

The builder's risk insurance, in fact, is a big topic. There is much more interesting issues besides what I have worked with in this paper. For instance, interest insured, incidence of loss and causation in particular. However, the author keeps the hope that her research, though limited, by emphasizing some points could explain more these three systems and help improve the existing clauses, especially the ones in Chinese situation. The author also hopes that this paper could attract more attention to research on the builder's risk insurance,

⁸⁹ § 19-9 (b)[...] Components, equipment and materials supplied by the buyer are, however, only covered if this is set out in the policy, or transpires from circumstances in general.

⁹⁰ See also Gao Linlin, *Research on the Builder's risk insurance*, Dalian Maritime University, p28

as it plays an essential protective role for the shipbuilding industry.

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Annex

Annex 1: Institute Builder's Risk Clauses (CL. 351) (1988)

Annex 2: The People's Insurance Company of China Builders' risk insurance clauses (1986)

Annex 3: Norwegian Marine Insurance Plan of 1996, Version 2010

Annex 1

1/6/88

INSTITUTE CLAUSES FOR BUILDERS' RISKS

CI.351

(This insurance is subject to English law and practice)

VESSEL.....Contract or Yard No.

BUILDERS.....

.....

BUILDERS'

YARDS.....

.....

SUBJECT OF INSURANCE

(Where more than one part of the subject-matter insured is described in Section I(A), Section I(B) or Section II below, then the

SECTION I. Provisional Periodfrom.....but this insurance to
terminate upon delivery to Owners if prior to expiry of Provisional Period.

(A) HULL and MACHINERY etc. under construction at the yard or other premises of the Builders.

	Contract or Yard No.	Provisionally valued at	To be built at / by

respective wording of Section I(A), Section I(B) or Section II shall be applied to each part separately.)

The subject-matter of this sub-section (A) is covered whilst at Builders' Yard and at Builders' premises elsewhere within the port or place of construction at which the Builders' Yard is situated and whilst in transit between such locations. The Underwriters' liability in respect of each item of this sub-section (A) which is at such locations shall attach from the time;

- (I) of inception of this Section I if such item has already been allocated to the Vessel;
- (II) of delivery to Builders of such item (if allocated) when delivered after inception of this Section I;
- (III) of allocation by Builders if allocated after inception of this Section I.

	Contract or Yard No.	Provisionally valued at	To be built at / by

(B) MACHINERY etc. insured hereon whilst under construction by Sub-Contractors.

The subject-matter of this sub-section (B) is covered whilst at Sub-Contractors' works and at Sub-Contractors' premises elsewhere within the port or place of construction at which the Sub-Contractors' works are situated and whilst in transit between such locations. The Underwriters' liability in respect of each item of this sub-section (B) which is at such locations shall attach from the time:-

- (I) of inception of this Section I if such item has already been allocated to the Vessel;
- (II) of delivery to the Sub-Contractors of such item (if allocated) when delivered after inception of this Section I;
- (III) of allocation by the Sub-Contractors if allocated after inception of this Section I.

The subject-matter of this sub-section (B) is also covered whilst:-

- (a) in transit to Builders if the transit is within the port or place of construction at which the Builders' Yard is situated;
 (b) at Builders' Yard and at Builders' premises elsewhere within the port or place of construction at which the Builders' Yard is situated and whilst in transit between such locations.

SECTION II. Provisional Periodfrom.....

but this insurance to terminate upon delivery to Owners if prior to expiry of Provisional Period.

MACHINERY etc. insured hereon from delivery to Builders.

The subject-matter of this Section II is covered whilst at Builders' Yard and at Builders' premises elsewhere within the port or place of construction at which the Builders' Yard is situated and whilst in transit between such locations. The Underwriters' liability in respect of each item of this Section II shall attach from the time of delivery to Builders.

	Contract or Yard No.	Provisionally valued at	To be built at/by

1. INSURED VALUE

1.1 Whereas the value stated herein is provisional, it is agreed that the final contract price, or the total building cost plus % whichever is the greater, of the subject-matter of this insurance shall be the insured value.

1.2 Should the insured value, determined as above,

1.2.1 exceed the provisional value stated herein, the Assured agree to declare to the Underwriters hereon the amount of such excess and to pay premium thereon at the full policy rates, and the Underwriters agree to accept their proportionate shares of the increase, or

1.2.2 be less than the provisional value stated herein, the sum insured by this insurance shall be reduced proportionately and the Underwriters agree to return premium at the full policy rates on the amounts by which their respective lines are reduced.

1.3 Nevertheless, should the insured value exceed 125% of the provisional value, then the limits of indemnity under this insurance shall be 125% of the provisional value, any one accident or series of accidents arising out of the same event.

1.4 Notwithstanding the above it is understood and agreed that any variation of the value for insurance on account of a material alteration in the plans or fittings of the Vessel or a change in type from that originally contemplated does not come within the scope of this clause and such a variation requires the specific agreement of the Underwriters.

2. TRANSIT

Held covered at a premium to be arranged for transit not provided for in Section I or II above.

3. DELAYED DELIVERY

Held covered at a premium to be arranged in the event of delivery to Owners being delayed beyond the provisional period(s) mentioned above, but in no case shall any additional period of cover extend beyond 30 days from completion of Builders' Trials.

4. DEVIATION OR CHANGE OF VOYAGE

Held covered in case of deviation or change of voyage, provided notice be given to the Underwriters immediately after receipt of advices and any amended terms of cover and any additional premium required by them be agreed.

5. PERILS

5.1 SUBJECT ALWAYS TO ITS TERMS, CONDITION AND EXCLUSIONS this insurance is against all risks of loss of or damage to the subject-matter insured caused and discovered during the period of this insurance including the cost of repairing replacing or renewing any defective part condemned solely in consequence of the discovery therein during the period of this insurance of a latent defect. In no case shall this insurance cover the cost of renewing faulty welds.

5.2 In case of failure of launch, the Underwriters to bear all subsequent expenses incurred in completing launch.

6. EARTHQUAKE AND VOLCANIC ERUPTION EXCLUSION

In no case shall this insurance cover loss damage liability or expense caused by earthquake or volcanic eruption. This exclusion applies to all claims including claims under Clauses 13, 17, 19 and 20.

7. POLLUTION HAZARD

This insurance covers loss of or damage to the Vessel caused by any governmental authority acting under the powers vested in it to prevent or mitigate a pollution hazard, or threat thereof, resulting directly from damage to the Vessel for which the Underwriters are liable under this insurance, provided such act of governmental authority has not resulted from want of due diligence by the Assured, the Owners, or Managers of the Vessel or any of them to prevent or mitigate such hazard or threat. Master, Officers, Crew or Pilots not to be considered Owners within the meaning of this Clause 7 should they hold shares in the Vessel.

8. FAULTY DESIGN

Notwithstanding anything to the contrary which may be contained in the Policy or the clauses attached thereto, this insurance includes loss of or damage to the subject-matter insured caused and discovered during the period of this insurance arising from

faulty design of any part or arts thereof but in no case shall this insurance extend to cover the cost or expense of repairing, modifying, replacing or renewing such part or parts, nor any cost or expense incurred by reason of betterment or alteration in design.

9. NAVIGATION

9.1 With leave to proceed to and from any wet or dry docks, harbours, ways, cradles and pontoons within the port or place of construction and to proceed under own power, loaded or in ballast, as often as required, for fitting out, docking, trials or delivery, within a distance by water of 250 nautical miles of the port or place of construction, or held covered at a premium to be arranged in the event of such distance being exceeded.

9.2 Any movement of the Vessel in tow outside the port or place of construction held covered at a premium to be arranged, provided previous notice be given to the Underwriters.

10. DEDUCTIBLE

10.1 No claim arising from a peril insured against shall be payable under this insurance unless the aggregate of all such claims arising out of each separate accident or occurrence (including claims under Clauses 13, 17, 19 and 20) exceeds in which case this sum shall be deducted. Nevertheless the expense of sighting the bottom after stranding, if reasonably incurred specially for that purpose, shall be paid even if no damage be found. This Clause 10.1 shall not apply to a claim for total or constructive total loss of the Vessel or, in the event of such a claim, to any associated claim under Clause 20 arising from the same accident or occurrence.

10.2 Claims for damage by heavy weather occurring during a single sea passage between two successive ports shall be treated as being due to one accident. In the case of such heavy weather extending over a period not wholly covered by this insurance the deductible to be applied to the claim recoverable hereunder shall be the proportion of the above deductible that the number of days of such heavy weather falling within the period of this insurance bears to the number of days of heavy weather during the single sea passage. The expression "heavy weather" in this Clause 10.2 shall be deemed to include contact with floating ice.

10.3 Excluding any interest comprised therein, recoveries against any claim which is subject to the above deductible shall be credited to the Underwriters in full to the extent of the sum by which the aggregate of the claim unreduced by any recoveries exceeds the above deductible.

10.4 Interest comprised in recoveries shall be apportioned between the Assured and the Underwriters, taking into account the sums paid by the Underwriters and the dates when such payments were made, notwithstanding that by the addition of interest the Underwriters may receive a larger sum than they have paid.

11. UNREPAIRED DAMAGE

11.1 The measure of indemnity in respect of claims for unrepaired damage shall be the reasonable depreciation in the market value of the Vessel at the time this insurance terminates arising from such unrepaired damage, but not exceeding the reasonable cost of repairs.

11.2 In no case shall the Underwriters be liable for unrepaired damage in the event of a subsequent total loss (whether or not covered under this insurance) sustained during the period covered by this insurance or any extension thereof.

11.3 The Underwriters shall not be liable in respect of unrepaired damage for more than the insured value at the time this insurance terminates.

12. CONSTRUCTIVE TOTAL LOSS

12.1 In ascertaining whether the subject-matter insured is a constructive total loss, the insured value shall be taken as the repaired value and nothing in respect of the damaged or break-up value shall be taken into account.

12.2 No claim for constructive total loss based upon the cost of recovery and/or repair shall be recoverable hereunder unless such cost would exceed the insured value. In making this determination, only the cost relating to a single accident or sequence of damages arising from the same accident shall be taken into account.

13. GENERAL AVERAGE AND SALVAGE

13.1 This insurance covers the Vessel's proportion of salvage, salvage charges and/or general average, reduced in respect of any under-insurance, but in case of general average sacrifice of the Vessel the Assured may recover in respect of the whole loss without first enforcing their right of contribution from other parties.

13.2 Adjustment to be according to the law and practice obtaining at the place where the adventure ends, as if the contract of affreightment contained no special terms upon the subject; but where the contract of affreightment so provides the adjustment shall be according to the York-Antwerp Rules.

13.3 When the Vessel sails in ballast, not under charter, the provisions of the York-Antwerp Rules, 1974 (excluding Rules XX and XXI) shall be applicable, and the voyage for this purpose shall be deemed to continue from the port or place of departure until the arrival of the Vessel at the first port or place thereafter other than a port or place of refuge or a port or place of call for bunkering only. If at any such intermediate port or place there is an abandonment of the adventure originally contemplated the voyage shall thereupon be deemed to be terminated.

13.4 No claim under this Clause 13 shall in any case be allowed where the loss was not incurred to avoid or in connection with the avoidance of a peril insured against.

14. NOTICE OF CLAIM

In the event of loss damage liability or expense which may result in a claim under this insurance, prompt notice shall be given to the Underwriters prior to repair and, if the subject-matter is under construction abroad, to the nearest Lloyd's Agent so that a surveyor may be appointed to represent the Underwriters should they so desire.

15. CHANGE OF INTEREST

Any change of interest in the subject-matter insured shall not affect the validity of this insurance.

16. ASSIGNMENT

No assignment of or interest in this insurance or in any moneys which may be or become payable thereunder is to be binding on or recognised by the Underwriters unless a dated notice of such assignment or interest signed by the assured, and by the assignor in

the case of subsequent assignment, is endorsed on the Policy and the Policy with such endorsement is produced before payment of any claim or return of premium thereunder.

17. COLLISION LIABILITY

17.1 The Underwriters agree to indemnify the Assured for any sum or sums paid by the Assured to any other person or persons by reason of the Assured becoming legally liable by way of damages for

17.1.1 loss of or damage to any other vessel or property on any other vessel

17.1.2 delay to or loss of use of any such other vessel or property thereon

17.1.3 general average of, salvage of, or salvage under contract of, any such other vessel or property thereon, where such payment by the Assured is in consequence of the Vessel hereby insured coming into collision with any other vessel.

17.2 The indemnity provided by this Clause 17 shall be in addition to the indemnity provided by the other terms and conditions of this insurance and shall be subject to the following provisions:

17.2.1 Where the insured Vessel is in collision with another vessel and both vessels are to blame then, unless the liability of one or both vessels becomes limited by law, the indemnity under this Clause 17 shall be calculated on the principle of cross-liabilities as if the respective Owners had been compelled to pay to each other such proportion of each other's damages as may have been properly allowed in ascertaining the balance or sum payable by or to the Assured in consequence of the collision.

17.2.2 In no case shall the Underwriters' total liability under Clause 17.1 and 17.2 exceed their proportionate part of the insured value of the Vessel hereby insured in respect of any one such collision.

17.3 The Underwriters will also pay the legal costs incurred by the Assured or which the Assured may be compelled to pay in contesting liability or taking proceedings to limit liability, with the prior written consent of the Underwriters.

EXCLUSIONS

17.4 Provided always that this Clause 17 shall in no case extend to any sum which the Assured shall pay for or in respect of

17.4.1 removal or disposal of obstructions, wrecks, cargoes or any other thing whatsoever

17.4.2 any real or personal property or thing whatsoever except other vessels or property on other vessels

17.4.3 the cargo or other property on, or the engagements of, the insured Vessel

17.4.4 loss of life, personal injury or illness

17.4.5 pollution or contamination of any real or personal property or thing whatsoever (except other vessels with which the insured Vessel is in collision or property on such other vessels).

18. SISTERSHIP Should the Vessel hereby insured come into collision with or receive salvage services from another vessel belonging wholly or in part to the same Owners or under the same management, the Assured shall have the same rights under this insurance as they would have were the other vessel entirely the property of Owners not interested in the Vessel hereby insured; but in such cases the liability for the collision or the amount payable for the services rendered shall be referred to a sole arbitrator to be agreed upon between the Underwriters and the Assured.

19. PROTECTION AND INDEMNITY

19.1 The Underwriters agree to indemnify the Assured for any sum or sums paid by the Assured to any other person or persons by reason of the Assured becoming legally liable, as Owner of the Vessel, for any claim, demand, damages and/or expenses, where such liability is in consequence of any of the following matter or things and arises from an accident or occurrence during the period of this insurance:

19.1.1 loss of or damage to any fixed or movable object or property or other thing or interest whatsoever, other than the vessel, arising from any cause whatsoever in so far as such loss or damage is not covered by Clause 17.

19.1.2 any attempted or actual raising, removal or destruction of any fixed or movable object or property or other thing, including the wreck of the Vessel, or any neglect or failure to raise, remove, or destroy the same.

19.1.3 liability assumed by the Assured under contracts of customary towage for the purpose of entering or leaving port or maneuvering within the port

19.1.4 loss of life, personal injury, illness or payments made for life salvage.

19.2 The Underwriters agree to indemnify the Assured for any of the following arising from an accident or occurrence during the period of this insurance:

19.2.1 the additional cost of fuel, insurance, wages, stores, provisions and port charges reasonably incurred solely for the purpose of landing from the Vessel sick or injured persons or stowaways, refugees, or persons saved at sea

19.2.2 additional expenses brought about by the outbreak of infectious disease on board the Vessel or ashore

19.2.3 fines imposed on the Vessel, on the Assured, or on any Master Officer crew member or agent of the Vessel who is reimbursed by the Assured, for any act or neglect or breach of any statute or regulation relating to the operation of the Vessel, provided that the Underwriters shall not be liable to indemnify the Assured for any fines which result from any act neglect failure or default of the Assured their agents or servants other than Master Officer or crew member

19.2.4 the expenses of the removal of the wreck of the Vessel from any place owned, leased or occupied by the Assured

19.2.5 legal costs incurred by the Assured, or which the Assured may be compelled to pay, in avoiding, minimising or contesting liability with the prior written consent of the Underwriters.

EXCLUSIONS

19.3 Notwithstanding the provisions of Clauses 19.1 and 19.2 this Clause 19 does not cover any liability cost or expense arising in respect of:

19.3.1 any direct or indirect payment of the Assured under workmen's compensation or employers' liability acts and any other statutory or common law, general maritime law or other liability whatsoever in respect of accidents to or illness of workmen or any other persons employed in any capacity whatsoever by the Assured or others in on or about or in connection with the Vessel or her cargo materials or repairs

19.3.2 liability assumed by the Assured under agreement expressed or implied in respect of death or illness of or injury to any

person employed under a contract of service or apprenticeship by the other party to such agreement

19.3.3 punitive or exemplary damages, however described

19.3.4 cargo or other property carried, to be carried or which has been carried on board the Vessel but this Clause 19.3.4 shall not exclude any claim in respect of the extra cost of removing cargo from the wreck of the Vessel

19.3.5 loss of or damage to property, owned by builders or repairers or for which they are responsible, which is on board the Vessel

19.3.6 liability arising under a contract or indemnity in respect of containers, equipment, fuel or other property on board the Vessel and which is owned or leased by the Assured

19.3.7 cash, negotiable instruments, precious metals or stones, valuables or objects of a rare or precious nature, belonging to persons on board the Vessel, or non-essential personal effects of any Master, Officer or crew member

19.3.8 fuel, insurance, wages, stores, provisions and port charges arising from delay to the Vessel while awaiting a substitute for any Master, Officer or crew member

19.3.9 fines or penalties arising from overloading or illegal fishing

19.3.10 pollution or contamination of any real or personal property or thing whatsoever.

19.4 The indemnity provided by this Clause 19 shall be in addition to the indemnity provided by the other terms and conditions of this insurance.

19.5 Where the Assured or the Underwriters may or could have limited their liability the indemnity under this Clause 19 in respect of such liability shall not exceed Underwriters' proportionate part of the amount of such limitation.

19.6 In no case shall the Underwriters' liability under this Clause 19 in respect of each separate accident or occurrence or series of accidents arising out of the same event, exceed their proportionate part of the insured value of the Vessel.

19.7 PROVIDED ALWAYS THAT

19.7.1 prompt notice must be given to the Underwriters of every casualty event or claim upon the Assured which may give rise to a claim under this Clause 19 and of every event or matter which may cause the Assured to incur liability costs or expense for which he may be insured under this Clause 19

19.7.2 the Assured shall not admit liability for or settle any claim for which he may be insured under this Clause 19 without the prior written consent of the Underwriters.

20. DUTY OF ASSURED (SUE AND LABOUR)

20.1 In case of any loss or misfortune it is the duty of the Assured and their servants and agents to take such measures as may be reasonable for the purpose of averting or minimising a loss which would be recoverable under this insurance.

20.2 Subject to the provisions below and to Clause 10 the Underwriters will contribute to charges properly and reasonably incurred by the Assured their servants or agents for such measures. General average, salvage charges (except as provided for in Clause 20.4) collision defence or attack costs and costs incurred by the Assured in avoiding, minimising or contesting liability covered by Clause 19 are not recoverable under this Clause 20.

20.3 Measures taken by the Assured or the Underwriters with the object of saving, protecting or recovering the subject-matter insured shall not be considered as a waiver or acceptance of abandonment or otherwise prejudice the rights of either party.

20.4 When a claim for total loss of the subject-matter insured is admitted under this insurance and expenses have been reasonably incurred in saving or attempting to save the subject-matter insured and other property and there are no proceeds, or the expenses exceed the proceeds, then this insurance shall bear its pro rata share of such proportion of the expenses, or of the expenses in excess of the proceeds, as the case may be, as may reasonably be regarded as having been incurred in respect of the subject-matter insured.

20.5 The sum recoverable under this Clause 20 shall be in addition to the loss otherwise recoverable under this insurance but shall in no circumstances exceed the amount insured under this insurance in respect of the Vessel.

The following clauses shall be paramount and shall override anything contained in this insurance inconsistent therewith.

21. WAR EXCLUSION

In no case shall this insurance cover loss damage liability or expense caused by

21.1 war civil war revolution rebellion insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power

21.2 capture seizure arrest restraint or detainment (barratry and piracy excepted), and the consequences thereof or any attempt thereat

21.3 derelict mines torpedoes bombs or other derelict weapons of war.

22. STRIKES EXCLUSION

In no case shall this insurance cover loss damage liability or expense caused by

22.1 strikers, locked-out workmen, or persons taking part in labour disturbances, riots or civil commotion

22.2 any terrorist or any person acting from a political motive.

23. MALICIOUS ACTS EXCLUSION

In no case shall this insurance cover loss damage liability or expense arising from

23.1 the detonation of an explosive

23.2 any weapon of war and caused by any person acting maliciously or from a political motive.

24. NUCLEAR EXCLUSION In no case shall this insurance cover loss damage liability or expense directly or indirectly caused by or contributed to by or arising from

24.1 ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel

24.2 the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof

24.3 any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.

Annex 2

BUILDERS' RISKS INSURANCE CLAUSES (PICC) (1986)

I . Period of Insurance

Subject to the period of insurance specified in the Schedule to the policy, the insurance attaches from the day of commencement of the building berth until the time of delivery to the Order or Owner of the Insured Vessel upon completion of building, or until the time of expiry of the period of insurance, whichever first occurs.

The insurance on the materials, machinery and equipment allocated to Insured Vessel prior to application for insurance attaches from the day of inception of insurance specified in the Schedule to the Policy.

The insurance on the materials, machinery and equipment allocated or delivered to the Builders after inception of the insurance attaches from the time of allocation or delivery.

The Company will return to the assured the agreed premium if the assured Vessel is delivered to the Owner one month before expiry of the period of insurance stipulated in the Schedule to the Policy. No premium will be returned if the Insured Vessel is delivered to the Owner less than one month before expiry of the period of insurance. Where delivery is made beyond the period of insurance, previous written notice shall be given to the Company for an extension of the period of insurance.

An agreed additional premium will be charged if the time of extension attains one month; no additional premium will be charged if it is less than one month.

II. Insured Value and Insured Amount

The total building cost or the final contract value of the Insured Vessel shall be the Insured Value and the Insured Amount shall be determined upon the basis of the Insured Value. Where at the time of application for insurance the Insured Amount is based on the provisional value, the Insured shall notify the Company to effect adjustment of the Insured Amount when the Insured Vessel is completed or the final contract value is determined. On the difference between the Provisional Value and the Insured Value an additional premium will be charged pro rata if the provisional value is lower and a pro rata return of premium will be made if the provisional value is higher.

Nevertheless, should the Insured Value exceed the provisional value, then the indemnity under this insurance shall be limited to 125 % of the provisional value any one accident or series of accidents arising out of the same event. This provision, however, shall not apply to any variation of the building cost of the Insured Vessel resulting from a material alteration in design, fittings or type of the Vessel.

III Scope or Cover

The Company, shall be liable for the following loss of and/or damage to, and liability and expenses in connection with, the Insured Vessel:

1. loss or damage and expenses caused by the under mentioned events whilst the Insured Vessel is in course of construction, trials and delivery, including loading and unloading, transportation, storage and installation of all the materials, machinery and equipment necessary in building the Insured Vessel within the Shipyard, and whilst the Insured Vessel is in course of launching, proceeding to and from docks or mooring alongside a wharf:

- (1) natural calamities and/or accidents;
- (2) negligence , fault and lack of skill of workers, technicians, Master, Crew and Pilots;
- (3) latent defects in hull, machinery and equipment;
- (4) damage to or breakdown of docks, cradles and other like equipment;
- (5) faulty design of any part or parts of the Insured Vessel;
- (6) expenses necessarily incurred in completing launch after failure of launch;
- (7) expenses reasonably incurred for ascertaining the loss or damage falling within the scope of cover, and expenses of sighting the bottom after stranding, if incurred specially for that purpose, even though no damage is found.

2. liabilities and expenses under the following headings:

- (1) sacrifice in and contribution to general average;
- (2) salvage Charges;
- (3) in the case of collision, the indemnity which the Insured Vessel shall be held legally liable to pay for the loss and delay to and loss of use of the other ship in collision and the goods aboard such other ship, floating objects, dock, wharf or other fixed structures, as well as for sue and labor charges, general average and salvage charges in connection therewith, but in no case shall the amount so indemnified exceed the insured amount of the Insured Vessel;
- (4) expenses for the removal of the wreck of the Insured Vessel and any sum or sums in respect of the liabilities for death of or bodily injury to third parties consequent upon an accident to the Insured Vessel falling within the scope of cover which are to be reimbursed subject to the Protection and Indemnity Clause of the People's Insurance Company of China, but in no case shall such indemnity exceed the insured amount of the Insured Vessel;
- (5) legal cost incurred to limit liability after collision or other occurrence subject to prior consent of the Company in writing;
- (6) where the insured amount of the Insured Vessel is lower than the Insured Value, the Company's indemnity for the expenses and/or liabilities under this clause shall be in the proportion that the Insured Amount bears to the Insured Value.

IV. Exclusions

The Company shall not be liable for:

1. loss or damage caused by willful or unlawful acts of the assured;
2. expenses for repairing, modifying , replacing or remaking the part or parts of faulty design, and any expenses incurred for betterment or alteration in design;
3. liabilities and expenses assumed by the Insured in respect of loss of life of or injury to or illness of any person employed by the Insured;
4. loss or damage or expenses arising from nuclear reaction, nuclear radiation or radioactive contamination;
5. loss or damage. expenses or liabilities arising from war, hostile actions, armed conflicts, detonation of explosives, weapons of war, confiscation, requisition, strike, riot and civil commotion, and loss or damage caused by any person acting maliciously or from 3 political motive;
6. fines stipulated in the Building Contract and indirect loss through rejection or other causes;
7. loss or frustration of voyage caused by arrest, restraint or detainment by any country or armed bloc.

V. Location Limit

1. During the time of Building:

Within the Shipyard. Held covered subject to previous notice to the Company and payment of an agreed additional premium for any transportation, loading and unloading and storage outside the Shipyard of materials, machinery and equipment necessary in building the Vessel and any movement of the Vessel in tow outside the Shipyard.

2. During the time of Trial and Delivery:

Single voyage for the Vessel over 20 000 gross tons under own power to be within 500 nautical miles; between 1 000 and 20000 gross tons within 250 nautical miles; below 1 000 gross tons within 100 nautical miles. Should the aforesaid distances be exceeded, prior notice to be given to the Company and an agreed additional premium paid before such extended over attaches.

VI. Treatment of Claim

1. In lodging a claim, the Insured shall submit to the Company a written statement giving the circumstances and cause of the accident, statement of claim, invoice, survey report and other necessary documents and evidence. In the event of third party liability being involved, the correspondence exchanged with such third party for recovery purposes and other necessary documents shall be furnished to the Company.

2. The Company will be liable for the reasonable cost of replacement of part or parts and repairing charges without deduction new for old.

3. No claim for partial losses to the Insured Vessel arising from a peril insured against shall be payable under the policy unless the aggregate of all such claims arising out of each separate accident or occurrence including sue and labor charges, collision damage and expenses for the removal of the wreck of the Insured Vessel, etc. exceeds the deductible stipulated in the Policy in which case only the amount in excess of the deductible will be paid.

Claims for loss or damage by heavy weather occurring during a single sea passage between two successive ports shall be treated as being due to one accident.

4. In the case of sailing for trial, if no news is received of the whereabouts of the Insured Vessel over a period of 6 months after the date on which she is expected to return to the site of building, it shall constitute an event of missing of ships.

Where the Insured Vessel is missing or- the estimated aggregate of salvage charges, cost of repairs and other necessary disbursements incurred after loss or damage to the Insured Vessel exceeds the insured value of the Insured Vessel, it may be deemed as a total loss. In case of a subsequent total loss following loss of or damage to the Insured Vessel which is yet unrepaired, the Company shall only be liable for the total loss.

5. The time of validity of a claim in respect of anyone accident insured against shall not exceed a period of three months counting from the date of delivery.

VI. Obligations of the Insured

1. The Insured shall provide the Company with a copy of the Building Contract, Schedule of progress of building and other necessary documents at the time of applying for Insurance.

2. The Insured shall comply with all relative statutory requirements and take reasonable precautionary measures to avoid accidents. The representatives of the Company shall have the right to inspect the condition related to the construction of the Vessel. The Insured shall render all reasonable assistance for that purpose and give serious consideration to and put into practice any recommendations for prevention of loss put forward by the representatives of the Company.

3. In case of accident to the Insured Vessel falling under the scope of cover, the Insured shall notify the Company immediately and take all necessary measures to avoid aggravation of loss. The Company will pay for the expenses reasonably incurred in this respect, but in no case shall the amount exceed the insured amount of the property so saved. When repairs to such property are necessary, prior consent of the Company shall be obtained.

4. The Insured shall notify the Company in writing in good time of any material change in the risks covered under the Policy and request the Company to endorse the policy accordingly.

5. In event that third party liability is involved in the loss of or damage to pursue remedy against such responsible party, and the Company will pay reasonable expenses necessarily incurred for such purpose.

6. The Company may disclaim liability in event of intentional omission on the part of the Insured or his representatives to fulfill the aforesaid obligations.

VIII Treatment of Dispute

All disputes arising out of this insurance between the assured and the Company shall be settled through friendly negotiation. Where a settlement fails after negotiation, such dispute shall be submitted to arbitration or to court for legal action. Unless otherwise agreed, such shall be submitted to arbitration or to court for legal action. Unless otherwise agreed, such arbitration or legal action shall be carried out at the place where the defendant is domiciled.

Annex 3

Norwegian Marine Insurance Plan of 1996, Version 2010

Chapter 19 Builders' risks insurance

Section 1 Common provisions

§ 19-1. Perils covered/Re. § 2-8 cf. § 2-10

The insurance covers marine perils, cf. § 2-8, and strikes and lock-outs.

§ 19-2. Insurance period/Re. § 1-5

The insurance remains in effect until the takeover date stipulated in the building contract. If takeover is later than that date, the insurance will automatically be extended subject to an additional premium as agreed in the policy until the newbuilding is in actual fact taken over by the buyer.

If the newbuilding is not taken over by the buyer, the insurance is automatically extended subject to an additional premium as agreed in the policy until the newbuilding is in actual fact taken over by another buyer.

Extension of the insurance according to paragraphs 1 and 2 does not apply beyond nine months from the takeover date stipulated in the building contract.

§ 19-3. Co-insurance/Re. § 8-1

Unless otherwise agreed, the buyer is co-insured under § 8-1. However, this does not apply to cover of expenses under section 3.

If liability as mentioned in section 4 is covered by another insurance which the co-insured has effected, the co-insured's cover under section 4 is subsidiary in relation to that insurance.

§ 19-4. Transfer of the building contract/Re. § 3-21

If the building contract is transferred to a new shipyard, the insurance terminates as from the date of the transfer.

§ 19-5. Place of insurance

The insurance is in effect:

- (a) while in the builder's yard or other premises in the port where the builder's yard is situated and whilst in transit between these areas,
- (b) during trial runs within the area allowed by the newbuilding's provisional certificates.

If specifically agreed, the insurance also covers manufacture or transport outside the yard areas in the building port, insofar as this is set out in the policy.

§ 19-6. Removal plan/Re. § 3-22 and § 3-25

If it has been agreed that the insurance shall also be in effect outside the yard areas in the building port, cf. § 19-5, paragraph 2, and the newbuilding is to be removed outside the areas stipulated in § 19-5, paragraph 1 (a), a separate removal plan shall be drawn up. The removal plan shall be submitted to the insurer for approval. If this has not been done, or if the removal plan has not been adhered to during the removal, § 3-25, paragraph 1, shall apply correspondingly.

§ 19-7. The sum insured as the limit of the liability of the insurer/Re. § 4-18 and § 4-19

In addition to the sum insured as mentioned in § 4-18, paragraph 1, the insurer is separately liable up to an amount corresponding to the sum insured for damage, expenses and liability under section 3 and section 4 caused by any one casualty.

§ 19-8. Deductible

For any one casualty the deductible stated in the policy shall apply. If the same casualty entitles the assured to compensation according to sections 2, 3 and/or 4, only one deductible shall apply.

Total loss, cf. § 19-10 and § 19-11, costs in connection with the settlement of claims, cf. § 4-5, and loss in connection with measures to avert or minimize a loss, cf. § 4-7 to § 4-12, are recoverable without deductible.

Section 2 Loss of or damage to the newbuilding

§ 19-9. Objects insured/Re. § 10-1

The insurance covers:

- (a) the newbuilding,
- (b) components, equipment and materials manufactured or procured for the newbuilding. Components, equipment and materials supplied by the buyer are, however, only covered if this is set out in the policy, or transpires from circumstances in general,
- (c) the yard's costs in connection with drawings and other planning of the newbuilding, and
- (d) bunkers and lubricating oil on board.

§ 19-10. Insurable value

The insurable value when the newbuilding is ready for delivery constitutes:

- (a) the original contractual building price plus subsequently agreed deductions,
- (b) subsequently agreed additional amounts mentioned in the policy,
- (c) the value of the buyer's deliveries which are covered by the insurance, and
- (d) subsidies, contributions, etc., provided that this is set out in the policy or transpires from circumstances in general.

Before the newbuilding is ready for delivery, the insurable value constitutes the value under paragraph 1 with deductions for:

- (a) the value of the work not performed,
- (b) the value of components and materials not manufactured or procured, and
- (c) the proportional share of the subsidies which applies to the deductions under (a) and (b).

§ 19-11. Total loss in the event of condemnation

The assured may claim compensation for a total loss if the damage to the newbuilding is so extensive that the costs of repairs amount to more than 100% of the sum insured.

§ 19-12. Total loss where the yard's obligation to deliver no longer applies

The assured may claim compensation for a total loss where the yard's obligation to deliver no longer applies as a result of:

- (a) damage to or loss of the newbuilding or parts of it,
- (b) damage to the yard, or
- (c) damage to a subcontractor's yard, provided the work there is covered by the insurance in accordance with § 19-5, paragraph 2.

§ 19-13. Compensation in the event of a total loss/Re. § 4-1

In the event of a total loss where the newbuilding is ready for delivery, the insurer covers the sum insured, but not in excess of the insurable value.

In the event of a total loss before the newbuilding is ready for delivery, the insurer covers the proportion of the sum insured that is equivalent to the insurable value calculated according to § 19-10, paragraph 2.

§ 19-14. Damage/Re. chapter 12

If the newbuilding or components etc. have been damaged without § 19-11 or § 19-12 being applicable, the rules in chapter 12 shall apply, with the exception of § 12-3, § 12-4, § 12-5 (d), (e) and (f), § 12-6 and § 12-15 to § 12-18.

§ 19-15. Limitation of the insurer's liability/Re. § 12-1

If the damage is a result of an error in design, faulty workmanship or faulty material, the insurer is not liable for the costs of renewing or repairing the part or parts of the hull, machinery or equipment which were not in a proper condition.

§ 19-16. Compensation for unrepaired damage/Re. § 12-2

Even if repairs have not been carried out, both parties may claim compensation for the damage upon expiry of the insurance period, cf. § 19-3.

Compensation is calculated on the basis of a discretionary estimate of the costs of repairs upon expiry of the insurance period, but is limited to the price reduction attributable to the damage.

§ 19-17. Costs incurred in order to save time/Re. § 12-7, § 12-11 and § 12-12

The insurer is not liable for costs incurred in connection with:

- (a) temporary repairs according to § 12-7, paragraph 2, beyond the amount he saves through the postponement of the permanent repairs,
- (b) repairs and removal according to § 12-12, paragraph 2, beyond the amount that would have been recoverable if the lowest adjusted tender had been accepted, or for the loss of time according to § 12-11, paragraph 2.

Section 3 Indemnification of additional costs incurred in an unsuccessful launching and costs of wreck removal

§ 19-18. Additional costs incurred in an unsuccessful launching

In the event of an unsuccessful launching, the insurer covers the additional costs incurred by the assured in carrying out the launching.

§ 19-19. Costs of wreck removal

The insurer covers the assured's costs of necessary removal of wrecks from places owned by or at the disposal of the yard.

Section 4 Liability insurance

§ 19-20. Scope of the liability insurance.

The insurer covers the assured's liability resulting from personal injury or loss of life, loss of or damage to an object belonging to a third party, and liability for the removal of wrecks imposed by the authorities if the loss arose in direct connection with the performance of the building contract.

§ 4-16 shall apply similarly after the newbuilding has been launched, provided that the damage to or loss of the object concerned is attributable to collision or striking.

The insurer covers the assured's liability for bunker oil pollution damage under the provisions of national legislation that are based on the provisions of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (the Bunkers Convention).

§ 19-21. Limitations on the liability insurance

The insurer does not cover:

- (a) liability for personal injury or loss of life of the assured's employees,
- (b) liability for loss of or damage to objects belonging to the assured's employees,
- (c) loss which due to its nature is insurable under the rules in chapter 19, sections 1, 2 and 5,
- (d) loss covered by another liability insurance effected by the assured, and
- (e) loss which is exclusively based on a contract.

In the event of liability for personal injury, the insurer does not cover:

- (a) loss recoverable through social benefits or benefits from pension schemes in connection with work or occupation,
- (b) loss which due to its nature is covered by insurance benefits required under a collective agreement and which is financed by the liable employer, and
- (c) loss which is covered according to the Norwegian Occupational Injury Insurance Act of 16 June 1989 no. 65, or corresponding rules in the country where the repair yard is located.

Section 5 Supplementary covers.

§ 19-22. Applicable rules.

If additional cover has been agreed according to § 19-23, § 19-24 and § 19-25, the rules in chapter 19, sections 1 to 4, shall apply insofar as they have not been departed from in section 5.

§ 19-23. Insurance of additional costs in connection with rebuilding.

The insurance covers the difference between compensation paid under the builders' risks insurance, cf. sections 1 and 2, and the costs of rebuilding.

§ 19-24. Insurance of the yard's liability for the buyer's interest claim for instalments paid.

The insurance covers the yard's liability for the buyer's interest claim under the building contract in the event that the obligation to deliver ceases to apply due to loss or damage which is recoverable under § 19-12. Interest is calculated from the time of payment of the individual instalment up to the time of the total loss.

§ 19-25. Insurance of the yard's loss of interest and daily penalties in the event of late delivery.

The insurance covers the yard's loss of interest and daily penalties resulting from late delivery due to damage which is recoverable under the builders' risks insurance, cf. sections 1 and 2.

For any one casualty a deductible period shall be determined which is calculated from the start of the casualty and lasts until the delay resulting from the casualty is equivalent to the deductible period stated in the policy. Loss of interest and daily penalties during the deductible period are not recoverable.

The insurer's liability resulting from any one casualty is limited to the sum insured per day multiplied by the number of compensation days per casualty stated in the policy.

If the assured and the buyer agree to postpone the takeover date due to circumstances which do not provide any basis for compensation under this supplementary cover, the insurance is automatically extended subject to an additional premium as agreed in the policy until the newbuilding is in actual fact taken over by the buyer. § 19-2, paragraph 3, shall apply correspondingly.

If a late delivery is caused by a combination of several different perils and one or more of these perils are not covered by the insurance, the insurer shall cover a proportional share of the loss of interest and the daily penalties. The calculation shall be based on the delay which each of the perils would have entailed in excess of the deductible period if they had occurred separately.

If the assured takes measures to avert or minimize the delay covered by the insurance, the insurer shall not be liable for more than the amount he should have paid if no such measures had been taken. If the measures result in time being saved for the assured, he shall bear a share of the costs of the said measures that is proportional to the time saved for his account.

Section 6 Supplementary cover for war risks

§ 19-26. Perils insured.

The insurance covers war perils, cf. § 2-9, with the exception of strikes and lock-outs.

§ 19-27. Insurance period

The insurer's liability attaches when the newbuilding has been launched.

However, for machinery, components and materials liability does not attach until they have been placed on board the launched newbuilding.

§ 19-28. Other applicable provisions

The rules in chapter 19, sections 1 to 4, shall apply correspondingly to this insurance.

The insurance is also subject to § 15-5, § 15-6 and § 15-8.